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Current Topics.

Lord Macmillan.

IT was no doubt an act of self-renunciation on the part of LORD MACMILLAN to agree, on the invitation of the Prime Minister, a month or two ago, to exchange his venue from the placid atmosphere of the House of Lords, as an appellate tribunal, for that of the Ministry of Information in the conduct of which, however, as being a peer, he was unable personally to reply to his critics in the House of Commons where they were extremely vocal, and it is not therefore very surprising that he has tendered his resignation of that office. Relieved from its irritating duties we trust that ere long, when a vacancy occurs in the judicial staff of the House, he may return to continue the excellent work he did there, the recent reappointment of VISCOUNT MAUGHAM as a Lord of Appeal in Ordinary affording a precedent for such an appointment. Again and again tribute has been paid to the judicial aptitudes and breadth of view which he has ever displayed. Some years ago, it may be recalled, the Attorney-General of the day, in the course of an address to a law students debating society in the North of England, sought to impress upon his audience that one of the greatest qualities of a lawyer was to inspire confidence in the minds of his clients, and in illustration of this he mentioned how Lord, then Mr., MACMILLAN, on one occasion was briefed on behalf of a tenant for life in a dispute between him and the trustees of a marriage settlement. Litigation seemed inevitable, when the suggestion was made that the matter should be referred to arbitration, whereupon the solicitor for the trustees proposed that Mr. MACMILLAN should be chosen as arbitrator. As the Attorney-General added, "I do not think that any man could imagine a greater compliment in the confidence not only of his client but even of his opponent." Always a scholar, LORD MACMILLAN'S legal and literary aptitudes have found expression in numerous addresses, several of which are included in an admirable volume published a year or two ago under the title "Law and Other Things," whose contents, if we may adapt the language of the collect, should be "read, marked, learned and inwardly digested," for the volume will well repay perusal and reperusal. How he has occasionally been of service by assisting with his legal knowledge his friends in authorship he revealed a year or two ago in a letter to *The Times* in which he mentioned that Mr. GALSWORTHY, when writing his book "Maid in Waiting," administered to Mr. MACMILLAN as he then was, a series of searching interrogatories on the law of extradition, which he had to answer. In his letter he added that if some higher critic discovered a flaw in the proceedings as detailed in the work he, LORD MACMILLAN, must take his share of the blame. No flaw, we believe, has so far been discovered.

Hilary Law Sittings.

THE lists for the Hilary Term, which began on Thursday, show a not unexpected general decline in the number of causes set down for hearing compared with the corresponding term last year. Appeals to the Court of Appeal have decreased by fifty-four to 108. Seven of these are interlocutory. Thirteen of the 101 final appeals are from the Chancery Division, and there are sixty from the King's Bench Division, four from the Probate, Divorce and Admiralty Division, two from the County Palatine Court of Lancaster and twenty-two from the county courts, including three workmen's compensation cases. In the Chancery Division the total has decreased by eleven to 160. These include five Retained Matters before FARWELL, J., eighty-five causes in the Witness List, which is being dealt with by BENNETT and CROSSMAN, JJ., and forty-seven causes in the Non-Witness List, which is being dealt with by SIMONDS and MORTON, JJ. The other learned judges have a number of Retained and Assigned Matters which need not be further particularised. Companies Matters, numbering sixty-two, will come before CROSSMAN, J., and there are seven appeals and motions in bankruptcy. The number of actions in the King's Bench Division has declined by 751 to 696. The lists include three special jury and three common jury actions, 194 long non-jury actions, and 465 short non-jury actions. There are twelve short causes, and nineteen cases in the Commercial List. Appeals to the King's Bench Division have, on the other hand, increased, the present total for the Divisional Court being 107, compared with eighty-three last year. There are forty-five appeals in the Divisional Court List, thirty-five in the Revenue Paper, eleven in the Special Paper, three under the Housing Acts 1925–1935, and two under the Public Works Facilities Act, 1930. Divorce causes, comprising 1,064 undefended and 765 defended suits, number 1,829—a decrease of sixty-seven on last year's total. The number of Admiralty actions has declined by five to four.

Bar Council: Annual Statement, 1939.

THE Annual Statement for 1939 of the General Council of the Bar does not perhaps contain anything of outstanding note for solicitors, but the following items are selected for mention as of interest to that branch of the legal profession. Steps which have been taken to preserve the practices of barristers on whole-time war service are recalled. Joint meetings of the executive and professional conduct committees were held, and the Attorney-General and The Law Society were consulted to that end: and on 9th October a resolution was adopted, circulated to every practising barrister, and published in the Press. A form of notice to clients was approved by the Bar Council and The Law Society. It is pointed out that the aforesaid resolution does not apply to a barrister who has retired and whose war service is not merely an interlude, and that a serving barrister may nominate more than one barrister to do his work. In connection with the appointment of a committee, under the chairmanship of HODGSON, J., to consider the administration and working of the Poor Persons' Rules, the statement refers to The Law Society's inquiry whether, if Ord. XVI, r. 31 (B), were amended so as to enable profit costs to be charged, payment of fees to counsel or payment of counsel's out-of-pocket expenses would be a change of principle acceptable to the Bar Council. Such payments were disapproved by the council in 1934, but last year the council appointed a sub-committee to examine the question anew, and they had the benefit of the views of Mr. HASSARD SHORT, Secretary of the Poor Persons' Committee of the High Court. Meanwhile the Lord Chancellor's Committee has asked for the council's views on four specific points. The views of the circuits on these questions are being taken before the council gives the matter further consideration. One of the questions relating to professional conduct and practice arose in connection with the giving of evidence before the Disciplinary Committee of The Law Society. A barrister, on instructions, gave an undertaking to a court that his professional client agreed, having money in hand, on behalf of the lay client, to make monetary restitution, and the lay client was bound over. Upon failure of the undertaking the barrister was asked to give evidence before the Disciplinary Committee which was inquiring into allegations of the solicitor's conduct in this respect. He asked the Bar Council whether he would be at liberty to retain his brief papers which contained his instructions, and was informed by a committee of the council that it was not satisfied, in these circumstances, that he was under any obligation to return the brief papers, pending the inquiry. Another decision which may be mentioned is to the effect that the rule that a King's Counsel ought not to appear as an advocate in any court of law without a junior is not infringed in an appeal to the Privy Council where a King's Counsel is briefed with a junior who, although not a member of the English Bar, has himself the right of audience in that case before the Privy Council. Finally, it may be noted that for the information of solicitors or others who may desire to know changes of the addresses of barristers, the council decided during the year that a register should be kept at the council offices, 5, Stone Buildings, Lincoln's Inn, W.C.2.

Sale of Coal: Price Regulation.

READERS will remember that Pt. I of the Coal Mines Act, 1930, vested the control of the output and sale of coal throughout the country in bodies known as the central council and the executive boards, which operate respectively "the central scheme" and "the district schemes." Inasmuch as coal owners themselves are alone represented on these administrative bodies, s. 5 of the Act, which has been largely amplified by the Coal Act, 1938, s. 50 and Sched. VII, provided for the constitution of a national committee of investigation consisting of nine members and of district committees of investigation consisting of five members each, which were charged with the duty of investigating complaints made with regard to the central and district schemes respectively. Appeals as to the manner of the administration of a scheme went to the Central Appeal Tribunal. The coalmining industry is now acting under Government directions in regard to the supply and sale of coal and the activities of the committees of investigation and the appeal tribunal have recently been suspended by an Order made under the Emergency Powers (Defence) Act, 1939. It has, however, been arranged that the Central Price Regulation Committee set up under s. 8 (1) of the Price of Goods Act, 1939, shall during the war act as an advisory committee to the Secretary for Mines on matters affecting the interests of consumers of coal. The committee will undertake this work in a non-statutory capacity, since control of coal prices is not being exercised under the Prices of Goods Act.

The Young Persons (Employment) Act, 1938.

SECTION 1 of the Young Persons Employment Act, 1938, provides, *inter alia*, that in the case of a person who has not attained the age of sixteen years the total number of hours worked, exclusive of hours allowed for meals and rest, shall not exceed, during one year from the commencement of the Act, forty-eight in any one week, and, thereafter, forty-four. The Act came into force on 1st January, 1939, and therefore, under the foregoing provisions, the maximum weekly hours of work in relation to such persons were from 1st January, 1940 reduced from forty-eight to forty-four. The Act also provides (by s. 11) that, as from the expiration of one year from its commencement, (*a*) s. 1 (1) of the Shops Act, 1934, is to have effect, in the case of one who has not attained the age of sixteen years, as if a reference to forty-four working hours were substituted for forty-eight working hours, and (*b*) a new section, 1A, shall be inserted to the following effect: The occupier of a shop may, by exhibiting a notice to that effect, secure that the provisions of s. 1 of the Act of 1934 shall be applicable to the shop during the week within which Christmas Day falls and either the week before or the week after that week, as may be specified in the notice, and in such case the normal working hours for those under sixteen are, as respects the period specified in the notice, to be neither more than forty-eight in either week of the period, nor more than eighty-eight throughout the period.

Rear Lights on Cycles: The Motorist's Duty.

A SHORT point of some topical interest was raised in a case at Birmingham County Court in which judgment was given on Tuesday. On 4th September, the plaintiff, a cyclist, sustained injuries by being run down by the defendant's car. The accident occurred in the dark and the plaintiff admitted that he was not carrying a rear light as required by the law. He did not, however, know that he was required to have such a light, and Judge FINNEMORE did not consider that the plaintiff was negligent in not knowing of the lighting order as early as 4th September. The point of interest in the case turns upon the defence set up by the motorist, who submitted that in the exceptional conditions brought about by the war and the black-out there was no negligence on his part. The learned county court judge observed: "I hesitate to accept the view that merely because Parliament has said that owing to the war lighting is to be drastically restricted, and further has said that for the greater safety of everybody both cyclists and handcarts must carry rear red lights, a motorist is entitled to say 'Unless I can see a red light in front of me I am entitled to assume that there is nothing in front.' I do not think he is entitled to say that." The cyclist was awarded damages of the agreed amount in the event of the motorist being held liable. The case was noted in Wednesday's *Times*, from which the foregoing information has been taken.

Compensation (Defence).

SHIPPING CLAIMS TRIBUNAL RULES 1939.

A REFERENCE begins by *Notice of Application to the Tribunal* in Form A or B of the schedule (as the case may be) served by the claimant or by "the competent authority" (i.e., the Minister of Shipping, or the Government Department that requisitioned the vessel, as the case may be). The disputes will concern compensation payable for the requisition or acquisition of vessels or the taking of space or accommodation in them (if the parties are unable to agree). The Notice of Application will be sent in duplicate, with two copies of the *Notice of Claim* previously sent by the claimant to the competent authority under the Compensation (Defence) Notice of Claim (No. 2) Rules, 1939. The registrar will send to the other party a copy of the notice of application.

Points of Claim should be filed within the periods specified in r. 5, stating with reasonable particularity the relevant facts and the compensation claimed under the several statutory provisions. The claimant should give *Notice of Claim to interested parties* under s. 4 (3) or s. 5 (3), or s. 14 of the Act, within the periods specified in r. 6. A copy of the notice will be filed with the registrar. An interested party may apply to the registrar for leave to appear; if the appearance is necessary for the "complete and effectual determination of any dispute referred," leave will be given on terms and with directions. The claimant or the competent authority should file in duplicate with the application, a *Statement of Offer by the competent authority* made immediately prior to the reference; the registrar will forward a copy to the other party (r. 7). The claimant may be requested to supply further *particulars*; if he declines, the appropriate order may be sought (r. 8).

Points of Defence should be filed by the competent authority within twenty-one days of the points of claim, stating which facts are admitted, which denied, and which are not admitted, and setting out with reasonable particularity the relevant facts relied upon. Two signed copies should be delivered to the registrar; one, to be filed, the other to be delivered to the claimant (r. 9). The competent authority may be requested to supply further *particulars*; if they decline, the appropriate order may be sought (r. 10).

Rules 11, 12 and 13 relate to *Offers made to the claimant by the competent authority*. If the competent authority does not think that the statement of offer filed by the claimant accurately sets out their maximum offer, they should file with their points of defence a statement giving the accurate maximum. If, on the other hand, the *claimant* does not think that the statement of offer filed by the competent authority accurately sets out their maximum offer, *he* should file with the registrar, within fourteen days, a statement giving the accurate maximum. In the absence of the filing of any such statement (or of any further statement under r. 13) the statement filed under r. 7 (unless the contrary is shown) will be accepted as accurate. A statement filed under r. 11 should be delivered in duplicate to the registrar; one copy will be filed; the other will be delivered by the registrar to the other party. By r. 13 the competent authority may *after reference* make a written offer in full settlement. Within seven days from the service of the offer, the claimant may serve a notice of acceptance upon the authority's solicitor, and may apply to the registrar for the taxation and payment of the costs up to the date of acceptance. Where the offer is not accepted within seven days, the authority should file in duplicate with the registrar a statement setting out the sum offered, the date and the non-acceptance.

The claimant may apply for leave to deliver *Points of Reply* within seven days of the points of defence; within seven days more, the authority may apply to deliver *Points of Rejoinder*. At any time, *leave to amend* may be obtained, on terms; all amendments may be made to determine the real questions at issue. Either party may apply for *the date and place of hearing to be fixed*, or for a preliminary hearing.

A *preliminary hearing* may be held at the instance of the tribunal, either to determine procedure or to fix or alter the place of hearing, or to decide upon concurrent hearings, or to ascertain any question of law which may ultimately be stated as a special case for the opinion of the court under s. 7, or for any other purpose (r. 17). No such hearing will be ordered unless a party affected is notified and is given an opportunity of objecting.

Affidavit evidence may be ordered by the registrar. The tribunal may take into consideration relevant matters which are *inadmissible in evidence* (r. 19). A party desiring to adduce inadmissible evidence, should, fourteen days before the hearing, give written notice to the registrar and to the other party, stating the nature of the evidence and specifying the documents, copies of which should, on request, be supplied to the other party. But the tribunal may admit the evidence, even though these provisions have not been complied with, if compliance was not reasonably practicable or could, without undue hardship, be dispensed with (r. 20).

Notice to admit documents, *Notice to produce documents* and *Notice to admit facts* (rr. 21, 22 and 23), may be given by one party to the other; on refusal to admit, the costs of proving the documents or the facts (as the case may be) must be paid by the party in default, unless the tribunal otherwise orders.

Orders to attend and give evidence or to produce documents will be in the scheduled form, as varied. They will be signed by the registrar and issued from the registry. Each order should contain the name of one person only and be served personally or by post a reasonable time before the hearing. The witness should be paid or tendered a reasonable sum to cover his travelling expenses (r. 24).

If a dispute referred is *withdrawn or settled*, immediate notice should be given to the registrar. Seven days before the hearing, the claimant should *deposit the documents for the use of the tribunal*—three copies of documents filed, of affidavits and of all other documents to be adduced in evidence (including documents under rr. 18, 19 and 20, and agreed correspondence). The competent authority should also deposit three copies of affidavits and other documents to be adduced under those rules (r. 26).

Extension of time (calculated according to Ord. LXIV) may be secured by consent or upon application to the registrar (r. 27). At any stage a party may apply to the registrar for *directions*. Applications will be by *summons* issued from the registry in the scheduled form, returnable on four days' notice; the costs will be in the registrar's discretion. At the request of a party made at the hearing or within four days after, the registrar must adjourn the hearing to the tribunal which will have complete discretion in making an order and in the costs (r. 29). Upon the application of any claimant or any competent authority, the registrar may order *concurrent hearings* if a common question of law or fact is raised by several disputes referred—even though the parties are different—and if it is expedient that the disputes should be disposed of together (r. 30). In the case of *death, bankruptcy or liquidation of the claimant*, the registrar may, upon application, if necessary for the complete settlement of all questions involved, order that the personal representatives, trustee in bankruptcy, liquidator or other successor in interest be made a party and be served with notice to appear (r. 31). The *post* may be used for service or sending of notices, documents or communications (r. 32).

Statements filed under rr. 7, 11 or 13 must not be disclosed to the tribunal until their decision is made known. If the claimant recovers a sum equal to, or less than, the sum offered, the claimant must bear the costs of the reference unless the tribunal orders otherwise (r. 33).

By r. 34 the *right of audience* is given to (*a*) any party except a company, which must be represented by a solicitor acting on its behalf or by a barrister retained on its behalf; (*b*) a duly authorised officer of a competent authority; (*c*) a barrister retained on behalf of a party; (*d*) a solicitor acting generally in the proceedings for a party, but not a solicitor retained as an advocate by the acting solicitor. In proceedings before the registrar the managing clerks of solicitors acting generally for a party may appear to address the registrar.

Non-compliance with the rules will not avoid a proceeding unless so ordered, but proceedings may be set aside as irregular or may be amended on terms, as directed by the tribunal or the registrar (r. 35).

The tribunal's decision may be given in writing signed by the members and sent to the parties; the tribunal need not meet to announce it. But where the decision is reserved in a dispute in which an offer has been made, the tribunal may be informed of the fact of an offer immediately before the decision is reserved; if the tribunal do not meet to give their decision, either party may apply after the decision for any question of costs to be argued (r. 36). The decision may include *an order as to costs* and may direct how the costs shall be assessed or taxed (r. 37).

Company Law and Practice.

Provisions of the Articles of Association relating to the distribution of surplus assets in a winding up.

Articles of association usually contain express provisions for the distribution of surplus assets in a winding up and it is common to provide that such distribution shall be by reference to the capital paid up on the shares. Comparatively slight variations in the wording of the relevant article will produce different results. *Prima facie*, however, the phrase "capital paid up" in this connection means not only capital paid up before the commencement of the winding up, but also capital called up in the course of liquidation for the purpose of paying debts and expenses or for equalising the capital accounts as between fully paid and partly paid shares. In other words, where in a liquidation the assets remaining after payment of debts and liabilities are insufficient to repay capital actually paid, the phrase "surplus assets"—those assets available for distribution among the shareholders—must be taken to include the amounts payable by holders of partly paid shares. "The term [surplus assets] *prima facie* implies that the capital account must have been properly equalised before any balance can exist for a general and equal return of capital." (*In re Anglo-Continental Corporation of Western Australia* [1898] 1 Ch. 327, at p. 334).

This is in accordance with the general principle (see *ex parte Maude*, 6 Ch. App. 51) applicable where the articles are silent as to the distribution of surplus assets; if the shares have been unequally called up and there remains, after payment of the debts and expenses, a balance insufficient for the return of all paid-up capital, the uncalled capital is liable to be called up for the purpose of meeting this loss: and after the capital account has been equalised by calling up or treating as called up unpaid capital, the whole resulting balance is returned in proportion to the amount paid up on each share, i.e., its whole nominal amount. That is to say the capital paid on a share, the amount of which determines the proportion of the surplus assets attributable to such share, includes capital called up or notionally called up in the liquidation and the surplus assets also include such capital.

The principle, applicable, as I have said, where the articles contain no express provision as to distribution of surplus assets, is not affected by an article which provides that if in a winding up the surplus assets are insufficient to repay the whole of the paid up capital, the surplus assets are to be distributed so that the losses shall be borne by the members in proportion to the capital paid, or which ought to have been paid, on the shares held by them respectively at the commencement of the winding up (see *Ex parte Lowenfeld*, 70 L.T. 3; *In re Anglo-Continental Corporation of Western Australia*, *supra*). Under such an article the loss is to be distributed equally, but subject to, not irrespectively of, the equalisation of the capital account: and if a call (whether actual or notional) is necessary to produce such equalisation, the amount of that call must be included in the words "capital paid up."

A slight alteration in the order of the wording of such an article will, however, produce a very different result. It will be observed that in the form of article which I have mentioned the losses are to be borne by the members in proportion to "the capital paid . . . on the shares held by them respectively at the commencement of the winding up." There the words "at the commencement of the winding up" have reference to the words "on the shares held by them." Where the relevant article provides that the surplus assets shall be distributed so that the losses shall be borne by the members "in proportion to the capital paid up at the commencement of the winding up on the shares held by them respectively" the words "at the commencement of the winding up" refer to the words "the capital paid up." The effect of such an article is to take the case out of the principle of distribution laid down by *Ex parte Maude*, *supra*: by the terms of the article the distribution is to be by reference to the capital paid up at the commencement of the winding up, and consequently there the "capital paid up" cannot include capital called in the liquidation. Accordingly where a company having such an article is wound up and the assets remaining after payment of the debts and expenses are insufficient to repay the whole of the paid-up capital, they are distributable, without calling up any uncalled capital, amongst the members in proportion to the amounts actually paid up before the commencement of the winding up on the shares held by them (see *In re Kinatan* (*Borneo*) *Rubber, Ltd.* [1923] 1 Ch. 124). If the article provides for distribution of the surplus assets by reference to the capital paid up or "which ought to have been paid up," the latter words refer to individual arrears of calls; so that if, as in *In re Kinatan* (*Borneo*) *Rubber, Ltd.*, *supra*, the losses are to be borne in proportion to the capital paid up or which ought to have been paid up at the commencement of the winding up, the distribution is in proportion to the amounts actually paid up or which, according to the calls made before the commencement of the winding up, ought to have been paid up before the commencement of the winding up.

I have so far been dealing with the effect of such an article as I have mentioned in the case where the surplus assets are insufficient to repay the whole of the paid-up capital. We have seen that under an article which provides for distribution in proportion to the capital paid on the shares held by members at the commencement of the winding up, in the event of an insufficiency the capital account as between fully and partly paid shareholders is first equalised and the assets then distributed, in effect, according to the nominal amount of the shares. But where there is an excess of assets over paid-up capital, such an article does not involve the adoption of the same procedure. In *Re Mutoscope and Biograph Syndicate* [1899] 1 Ch. 896 the articles provided that if in a winding up the surplus assets should be more than sufficient to repay the whole paid-up capital, the excess should be distributed among the members in proportion to the capital paid up on the shares held by them respectively at the commencement of the winding up. The surplus assets exceeded what was necessary to repay the paid-up capital, and it was held by Wright, J., that the balance, after repaying the paid-up capital, must be divided in proportion to the paid-up capital and that no call should be made to equalise the capital

accounts. Accordingly it seems that in this case, i.e., where the surplus assets exceed the amount of paid-up capital, the method of distribution of the excess is the same whether the articles provide for distribution in proportion to the capital paid up at the commencement of the winding up on the shares held or for distribution in proportion to the capital paid up on the shares held at the commencement of the winding up. In the case of a deficiency, however, then, as we have seen, these two forms of article produce different results.

A Conveyancer's Diary.

Wills.—VII.

A TESTATOR sometimes wishes to provide for the payment of his debts, especially mortgage debts, out of income, so that after an interval his successors may enjoy an unincumbered estate. Such a provision is not itself a breach of s. 164 of the L.P.A., 1925, as being an accumulation, because it falls within the exception created by subs. (2) thereof.

If the debts in respect of which the special arrangement is made are charged, e.g., by mortgage, on any part of the testator's real or personal estate, clear words must be used to displace the presumption that such debts are primarily payable out of the property charged (Administration of Estates Act, 1925, s. 35 (1)). A general direction for the payment of such debts or of all the testator's debts out of his personal estate, or his residuary real and personal estate, or his residuary realty, is not a sufficient declaration to displace the ordinary rule (subs. (2)). The expressions used in subs. (2) are, however, strictly construed (see *Re Fegan* [1928] Ch. 45).

Moreover, it must be borne in mind that the creation of a special fund by the debtor's will in no way affects the rights of the creditor (subs. (3)). This rule is expressed in the Act itself in connection with debts secured by a charge, but it is a general rule of law in any event.

Thus, in *Tewart* v. *Lawson*, L.R. 18 Eq. 490, the testator, who died in 1844, directed payment of all his debts, including a certain one of £8,000, out of the income of his estate, and that no person entitled to the estate for life or in tail was to be entitled to the rents and profits until the debt was paid. By 1874, when the case came on, all the debts had been paid out of the proceeds of sales effected under order of the court, except the one of £8,000, and there was an accumulation fund in court sufficient to pay the latter. It was held that the tenant for life ought to be let into possession. The court remarked that the scheme of the testator was to get all the debts paid out of income, however long that might take, but that that scheme "was necessarily subservient to the rights of the creditors to get paid in a different way." In fact the debts had mostly been paid out of *corpus* through the sales, and it was argued that in those circumstances the court ought to direct an accumulation to replace the *corpus* so sold. But Hall, V.-C., declined to do so, saying that the testator had made no provision for the event which had happened and that the court could not in effect write a new clause into the will.

A similar point arose in *Norton* v. *Johnstone*, 30 Ch. D. 649, where the testator directed his trustees to accumulate the residue of the income of the estate after paying certain mortgage interest, until a sufficient fund had been collected to pay off the mortgages. The testator died in 1875. At the various dates before 1885 the mortgagees sold the land under their power of sale and paid themselves off. It was held that the accumulation must come to an end and the tenant for life must be let into possession. This decision was arrived at notwithstanding that there was some suggestion that the sale was made collusively at the request of the tenant for life, and Pearson, J., indicated that the same result would have followed if the tenant for life had himself sold the land under the Settled Land Act, 1882. It is to be observed that in this case the dates were such that the direction to recoup could not have been held to be bad on the ground of the Accumulations Act as only ten years had elapsed since the death of the testator. The learned judge indicated that his *ratio decidendi* was that "the mortgage debts have been paid in a way different from that which the testator intended, but he has not provided for that event." Accordingly he refused to direct a further accumulation in order to recoup to capital the amount by which it had been depleted.

These two cases are therefore authority for the proposition that no recoupment will be directed, whether inside or outside the accumulation period, in the absence of an express direction by the testator that there should be a recoupment.

In *Re Heathcote* [1904] 1 Ch. 826, Swinfen Eady, J., purported to follow *Tewart* v. *Lawson* in refusing to direct recoupment and also remarked that a direction to accumulate in order to recoup would not be an accumulation for the payment of debts because *ex hypothesi* the debts must have already been paid. Accordingly, he said that, as the testator in that case had already been dead for twenty-three years, an accumulation for recoupment would be bad under the Accumulations Act. The difference between *Re Heathcote* and the two earlier cases was that in the former there was an express direction to recoup. Accordingly the learned judge was in error in saying that the case was covered by *Tewart* v. *Lawson*, because the whole point of that case was that there was no express direction for recoupment. On the other hand, he was perfectly correct in saying that an accumulation for recoupment is not an accumulation for the payment of debts and that, therefore, it will be bad after the expiration of the ordinary period allowed by the Accumulations Act. As the testator had been dead for more than twenty-one years there could, obviously, be no such accumulation.

In *Re Earl of Stamford and Warrington* [1925] Ch. 162, much the same point was considered, but was overlaid by a mass of other points. Apparently, in 1895, Stirling, J., had given a direction for recoupment which Russell, J., in 1924, considered to have been wrongly made (see p. 175), but the ground of Russell, J.'s opinion was that a provision for recoupment is not a provision for the payment of debts within s. 2 of the Accumulations Act, and, consequently, that such a direction is bad after twenty-one years.

Accordingly, two points appear to be established: (1) the court will not read a direction for recoupment into the will; (2) a direction for recoupment is not a direction for the payment of debts, and therefore an accumulation for recoupment cannot go on for more than the ordinary statutory accumulation period.

I suggest, therefore, that if a testator expresses a wish for a provision for the payment of debts out of income, it should be in some such form as the following: "I devise my Blackacre estate to my trustees upon trust to sell the same and to apply the net rents and profits thereof pending sale, and the net income of the proceeds of sale after payment of outgoings, in reduction of the mortgage debt of £10,000 charged thereon and owing to A until the same is discharged, and, if the said debt shall be repaid to A otherwise than out of the said rents and profits and income, my trustees shall accumulate the said rents and profits and income until they have in their hands a fund equal to the amount so paid off otherwise than out of income, or until the expiration of the period of twenty-one years from my death, whichever period first expires, and shall apply the sum so accumulated in recouping to the fund out of which the said debt was paid the amount so paid in discharge of the said debt and subject thereto I give the said rents and profits and income to my son X for his life with remainder, etc. . . ."

The Annual General Meeting of the Bar will be held in the Inner Temple Hall on Thursday, 18th January, at 3.45 p.m. The Attorney-General will preside.

Landlord and Tenant Notebook.

"Fair Wear and Tear Excepted": Scope of the Exception.

A CORRESPONDENT draws attention to the following phenomenon: some leases and tenancy agreements contain a *prima facie* unqualified covenant to repair followed by a covenant to yield up in repair "fair wear and tear excepted." These covenants may be found in the same clause or in separate clauses. The question arises, does the exception qualify the covenant to keep in repair?

While it does not conclude the question, I think it is probable that most of the instruments which manifest this phenomenon will be found to have been drawn before 5th February, 1937, if not before 22nd December, 1927, or at all events by draftsmen who ignored the effect of the decision in *Taylor* v. *Webb* [1937] 2 K.B. 283, C.A., given on the first-mentioned date if not the effect of L.T.A., 1927, s. 18, which was passed on the second-mentioned date (and which, though not in operation till the following Ladyday, then applied whether the lease was created before or after the commencement of the Act). The statutory enactment queered the pitch of many a landlord who looked forward to "dilapidations" as a matter of course; while the decision referred to gave an importance to the exception of fair wear and tear which it had ceased to enjoy. For before then the leading authority on the meaning of the exception was the decision of the Divisional Court in *Haskell* v. *Marlow* [1928] 2 K.B. 45, in which it was described as a "minor modification" of the "dominant obligation" to repair, one on which very little stress had been laid in older cases, and in which it was laid down that the adjective "fair" (or "reasonable") qualified not only the destructive agency but the *quantum* of effect produced by wear and tear. This decision was overruled by *Taylor* v. *Webb;* but in the meantime anyone drafting, on behalf of a landlord, a lease containing a covenant to repair or deliver up in repair could confidently agree to the insertion of a "fair wear and tear" exception with the reasonable expectation that it would be unlikely to affect his client's rights when the time came for assessing dilapidations.

It would follow that it did not matter much whether the exception qualified the covenant to keep in repair or the covenant to yield up in repair, or both.

But now that a gulf has appeared, or the gulf been widened, between covenants so qualified and unqualified, the question is indeed a pertinent one. There is no direct authority, and perhaps the best way to approach the problem is to put oneself in the position of a landlord claiming dilapidations when the covenant to deliver up contains the words "fair wear and tear excepted," but these are not to be found in the covenant to keep in repair.

It does not really matter for present purposes whether we visualise such a claim being made well before or at the end of or after the determination of the lease, for even in the last-mentioned case the landlord is perfectly entitled (subject to the law of limitation and the possible operation of the law relating to acquiescence) to sue for breach of the covenant to keep in repair.

It would therefore be for the covenantor to establish that an exception found in a different covenant or a different part of the same covenant governed the obligation on which the claim was based. I believe the chief arguments advanced by the covenantee would be: (1) The covenant to deliver up is otiose and can be ignored; (2) if not otiose, the exception makes it repugnant and it should be ignored on that ground. While the tenant would answer: (1) That the two covenants or promises may be different, but they are *in pari materia*; and (2) that the explanation of the apparent repugnancy is that the qualification shows what was the true intention of the parties.

On the whole, I think that the tenant's contentions would prevail. It is true that a covenant to deliver up *simpliciter* is one which leaves things as they were before, but the very fact that a covenant to deliver up in good repair except fair wear and tear affords an opportunity for giving effect to something, and the fair wear and tear must obviously operate throughout the term. As to repugnancy, again it is true that the rule is "the first words in a deed, the last words in a will" (so stated by Lord Mansfield, C.J., in *Doe d. Leicester* v. *Briggs* (1809), 2 Taunt. 109), but courts are loath to find repugnancy and the rule is subordinate to that which prescribes that the true intention must be sought: "every part . . . must be brought into action in order to collect from the whole one uniform and consistent sense, if that may be done," as Lord Ellenborough, C.J., put it in *Barton* v. *Fitzgerald* (1812), 15 Ea. 530 And what is the intention with which covenants relating to repairs are made? Surely, to impose and define responsibility for the maintenance of the premises. When the landlord is the covenantor, the covenantee is concerned with the maintenance of the premises all the time they are let, but not after: but when the tenant undertakes responsibility, he is rarely troubled during the term. If then a landlord is content to accept liability limited by reference to fair wear and tear as regards the yielding up, one could almost say that the tenant is impliedly licensed, when the lease is read as a whole, to permit fair wear and tear during the term.

But I think the most important consideration is what is implied by the above, namely, that the two covenants if different have the same object, and consequently a qualification of the one extends to the other. The authorities on this point are best consulted in "Norton on Deeds," 2nd ed., p. 601 *et seq.*

Our correspondent goes on to call attention to the first two provisions of s. 2 (1) of the Compensation (Defence) Act, 1939, which provides for the assessment of compensation payable to persons dispossessed under the emergency legislation, and does so by reference to our old friend the hypothetical tenant. Under (*a*) the person to be compensated is entitled to a sum equal to the rent which might reasonably be expected, etc., under a lease whereby the tenant undertook to pay all usual tenant's rates and taxes "and to bear the cost of all the repairs and insurance and other expenses, if any, necessary to maintain the land in a state to command that rent"; (*b*) gives him in addition a sum equal to the cost of making good any damage to the land which may have occurred during, etc. (except in so far as made good), "no account being taken of fair wear and tear or of damage caused by war operations." A subsequent proviso limits the maximum amount payable under (*b*) to the value of the land when possession was taken; which would mean, I take it, that if a building were destroyed by fire and the owner had to clear the site before rebuilding and found the cost of clearing exceeded the value of the site, he would be the loser.

But what our correspondent asks is this: Does the "no account being taken of fair wear and tear" in (*b*) qualify the "undertook to bear the cost of repairs" in (*a*)? One might put it in this way: suppose that certain property would let at £110 per annum if the landlord undertook all repairs; at £105 if there were no express covenant by either party, the tenant's obligation being thus limited to keeping the premises wind and water tight; at £100 if the tenant covenanted to keep them in good and tenantable repair, fair wear and tear excepted; and at £90 if there were an unqualified covenant by the tenant. Suppose, also, that accidental or wanton damage to the extent of £10 occurs while the departmental possession lasts, and that this lasts for one year. Is the owner entitled to £100 plus £10, or to £90 plus £10? If the hypothetical covenant is qualified, the answer is £100 plus £10; if unqualified, £90 plus £10.

While it would seem that as a matter of justice the owner ought to be paid £110, I doubt whether the statute can be interpreted in that way. The phrase "to bear the cost of

the repairs and insurance, and the other expenses, if any, necessary to maintain . . . in a state to command that rent" is derived from rating law, namely, from those enactments which define the difference between gross and net annual value—see now R.V.A., 1925, s. 168 (1), which defines gross value by reference to an imaginary landlord bearing that cost and those expenses, and s. 22 (1) (*b*), which for the purpose of ascertaining rateable value directs estimation of the rent at which the hereditament might reasonably be expected to be let if the tenant undertook to pay, etc., and "to bear the cost of the repairs and insurance . . . "—the phrase proceeds as usual; "and the annual value so estimated shall . . . be taken to be the net annual value of the hereditament." It can hardly be said, especially when one considers the "other expenses, if any, necessary to maintain the hereditament [in R.V.A., 1925] or the land" [in the Compensation (Defence) Act, 1939], that any qualification of the undertaking by reference to fair wear and tear or otherwise is contemplated. Another consideration is that s. 2 (1) (*b*) of the recent Act visualises something different from what is dealt with by s. 2 (1) (*a*); under (*a*) our imagination is to be exercised in any event, and to the extent of supposing the premises to be let though they are not, and this is for the purpose of ascertaining the minimum compensation due: while (*b*) operates only in the event of damage occurring, but can be operated without imagining any tenancy.

Our County Court Letter.

THE CONTRACTS OF ORGANISTS.

In a recent case, at Tredegar County Court (*Gibbon* v. *Williams*), the claim was for £6, as salary in lieu of notice, or, alternatively, as damages for wrongful dismissal. The plaintiff's case was that he had been appointed organist of Cwm Church, many years ago, at a salary of £12 per annum. He was, therefore, entitled to six months' notice. The defendant, the present incumbent, had been vicar for about seven years, during which there had been some changes in the form of service. Being asked by the defendant as to the possible reason for a diminution in the congregation, the plaintiff had suggested that this might be due to the omission of parts of the service requiring the organ. This was apparently taken as a criticism of the form of service, as the defendant wrote that, owing to the plaintiff's views, they could not work together again. As other arrangements were made for the playing of the organ, the plaintiff was given a cheque for £6 to the end of the year. The defendant's case was that he had been taking part in a conversation with a third party, when the plaintiff intervened. The discussion had related to cassocks and surplices; but the plaintiff suggested that overcoats were wanted. He subsequently departed, with the remark: "I am not wanted here," and had not been dismissed by the defendant. His Honour Judge Thomas held that, in view of the plaintiff's own remark on leaving, there was no wrongful dismissal. He had been paid *pro rata* to the end of the year, which was more than he was legally entitled to. Judgment was given for the defendant, with costs. See further, *Wyndham* v. *Cole* (1875), 1 P.D. 130. The terms of an organist's appointment may necessitate his suing the parochial church council, and not the vicar or churchwardens, in the event of a dispute. The choice of music lies with the minister, in the absence of a custom to the contrary, but it is generally considered that the organist can appeal to the bishop.

SALE OF FISH AND CHIP BUSINESS.

In *Randle* v. *Friswell*, recently heard at Coventry County Court, the claim was for £127 16s. as damages for breach of contract. The plaintiff's case was that, by an agreement partly oral and partly in writing, the defendant sold him a fish and chip business at 24, King Street, Bedworth. The plaintiff paid £250 and agreed to pay a further £50 as soon as the premises were put into a fit state of habitation. This was to be done not later than three months from the date of the agreement, viz., October, 1937. It was further agreed that the defendant should let the premises to the plaintiff for £1 2s. 6d. a week until the work was done, and thereafter at £1 a week plus rates. The defendant, however, had failed to complete the work, and the plaintiff had been unable to reside in the premises. As a result, he had incurred the following expenses: Rent at his present address, £45; rates at that house, £10 16s.; cleaner's wages, £36; cost of minding children, £36. The defendant's case was that, when the agreement was made in 1937, the house was not habitable, and she merely promised to make it so as soon as possible. No time limit was mentioned, and it was necessary to demolish an adjoining property before carrying out the necessary work. A closing order was not made, in respect of the adjoining property, until 1938, and the tenants were not rehoused until January, 1939. The defendant then instructed her architect, who deposited plans in April. These were approved by the Bedworth Urban District Council on the 12th July. Any delay had therefore not been attributable to the defendant. His Honour Judge Donald Hurst held that the defendant had agreed to reinstate the property within a stated time limit, which had not been observed. The plaintiff was therefore entitled to the following damages: Rent at his present address, £30; rates £3 5s.; cleaner's wages, £6. The item for minding children was disallowed as this expense would have been incurred, even at the new address.

Reviews.

The Solicitors' Handbook of War Legislation. By S. M. Krusin, B.A., and P. H. Thorold Rogers, B.A., B.C.L., of the Middle Temple, Barristers-at-Law. 1940. Royal 8vo. pp. lx and (with Index) 836. London: Sweet & Maxwell, Ltd., Stevens & Sons, Ltd., and The Solicitors' Law Stationery Society, Ltd. 30s. net.

Although the last great war took place within living memory, it must be admitted that the tremendous bulk of the emergency legislation and statutory rules and orders which were passed on the commencement of the present hostilities took the legal profession somewhat by surprise. If gratitude is due from the public to those whose thoroughness and energy enabled this carefully planned legislation to be placed so promptly on the statute book, many more thanks are due from the profession to the authors and publishers of a comprehensive work on the new legislation, published at the beginning of the new year and brought up to so late a date. The authors in their preface only claim to have brought the law up to the 1st December, but in the Addenda which are prefixed to the text are to be found notes on the recent decision in *A.-G.* v. *Hancock* (*The Times*, 20th December), in which it was held that the Courts (Emergency Powers) Act, 1939, did not bind the Crown and also on the latest statutory rules and orders.

The whole of the legislation is conveniently classified into nine subjects, viz., the Courts and Litigation, Property, Wills and Trusts, Finance, Commerce, National Service, Social Services, Emergency Powers, and Compensation. Each is dealt with in a separate part, opening with a list of the legislation comprised in it, and a preliminary note summarising the effect of the legislation, with a discussion in some cases of the general principles affected by the subject-matter. The text of the legislation is then set out, with notes, including the various regulations, rules and orders, with notes. Legislation dealing with purely departmental matters and other matter of no interest to the practising lawyer, such as the Exchequer and Audit Departments (Temporary Provisions) Act and the Unemployment Assistance (Emergency Provisions)

Act have, of course, been omitted. In other cases a few Acts of secondary importance have been summarised in the preliminary notes. Even with these unimportant and necessary omissions, the bulk of the legislation which has been annotated is, to say the least, awe-inspiring.

A highly attractive feature of the work is the completeness of the references to cases decided during the last war. These references are legion and afford valuable assistance in the solution of the problems of the present emergency legislation. The authors are also courageous enough to offer submissions on the interpretation of difficult passages in the new legislation. The interpretation of many of these involve a profound knowledge of the principles of jurisprudence, which the learned authors obviously possess. The meaning of the word "remedy" in s. 1 (2) (*a*) of the Courts (Emergency Powers) Act, 1939, has already caused some perplexity to practitioners, particularly in the application of s. 1 (2) (*a*) (ii) ("remedy . . . by way of . . . (ii) the taking possession of any property") to hire-purchase agreements. This problem is approached boldly, and a possible solution is offered, which, while it cannot be conclusive before authoritative decisions are available, is nevertheless of considerable value. One may also note, in passing, the skilful treatment of such complex legislation as the Rent and Mortgage Interest Restrictions Act, 1939, and the Landlord and Tenant (War Damage) Act, 1939, and the admirable preliminary note on the general principles of law and the rights of the subject prefixed to the part on Emergency Powers.

Reference should finally be made to the authors' efficient summaries of the recent decisions in *A.* v. *B.* [1939] W.N. 376, and *In re a Debtor* [1939] W.N. 380. The first, though a decision that the questions of inability immediately to meet obligations and of whether such inability is due to circumstances directly or indirectly attributable to the war are questions of fact, is now in constant use in "the appropriate court," and practitioners will be indebted to the authors for their able summary of the statement by the Court of Appeal as to the onus of proof and as to what the appropriate court must take into account. The second decision is commented upon with equal ability.

The Tables of Cases, Statutes and Rules and Orders, together with the Index, afford the fullest possible assistance to the busy practitioner who seeks a speedy reference. It is safe to predict that all who, either in the capacity of advocates or advisers, are concerned with the war legislation will find this comprehensive handbook indispensable.

Books Received

Defence Regulations (being Regulations made under the Emergency Powers (Defence) Act, 1939, printed as amended up to and including 11th December, 1939), together with a table of Acts of Parliament amended, suspended or applied by Defence Regulations and Orders made thereunder, and by Orders in Council made under the Chartered and Other Bodies (Temporary Provisions) Act, 1939. pp. iii and 152. London: H.M. Stationery Office. Price 2s. 6d. net.

The Scottish Law Directory for 1940. Forty-ninth year. Glasgow, Edinburgh and London: William Hodge & Co., Ltd. Price 10s. net.

Annual Register of Charities and Public Institutions. Forty-seventh edition. pp. 486 (with Index). London: Longmans, Green & Co., Ltd. Price 8s. 6d. net.

Excess Profits Tax Law and Practice. By Ronald Staples and Roy C. Borneman. 1939. Demy 8vo. pp. xiv and (with Index) 158. London: Taxation Publishing Co., Ltd., and Jordan & Sons, Ltd. Price 7s. 6d. net.

Loose-Leaf War Legislation. Edited by John Burke, Barrister-at-Law. Parts 9, 10 and 11. Part 11 completes the emergency statutes for 1939. London: Hamish Hamilton (Law Books), Ltd. Price 5s. per part, net.

To-day and Yesterday.

Legal Calendar.

8 January.—To Lord Blackburn, who died on the 8th January, 1896, the Lords of Appeal owe their ability to sit and vote in the Upper House after retirement from office. A statute to this effect was passed with a view to persuading him to resign after a lapse into unwonted silence had revealed to his colleagues that he was not what he had been. The discovery of the change in his intellect was conclusively confirmed in their minds when another law lord on propounding an interesting problem and asking his view of the law received the reply: "Damn the law."

9 January.—In the Church of St. Peter at Gunby, in Lincolnshire, there is a monumental brass to the memory of Mr. Justice Lodington, of the Common Pleas, who died on the 9th January, 1420, after serving as a judge for only four and a half years, for he had been appointed four months before the battle of Agincourt had been won by Henry V, who, on his accession, had made him a King's Serjeant.

10 January.—At the Margate Quarter Sessions, on the 10th January, 1930, Sidney Fox appeared on six charges of defrauding hotels, and the grand jury found a true bill against him, for he and his old mother had lived for many years by cheating. But of those crimes he was never found guilty, as a graver accusation faced him. Two and a half months earlier his mother had died in a fire in a bedroom at the Hoy Hotel, Margate, twenty minutes before the expiration of an insurance policy on her life. As her son now stood charged with her murder, the indictment for fraud was transmitted to the Assizes. But at the Assizes he was sentenced to death.

11 January.—Antonio Cardoza found that even in assisting a lady in distress there was a limit prescribed by wisdom, when he was tried at the Old Bailey for murder, on the 11th January, 1811. With him in the dock stood Mary Rogers and Sarah Browne, who had been indulging in a British quarrel with a waterman when they saw their friend Antonio coming and called in his assistance. With Portuguese fervour he had drawn a knife and stabbed their enemy. Now it was he who suffered most heavily for, since he had no interest in the fight, the jury convicted him of murder. Sarah got off with a verdict of manslaughter and Mary was acquitted.

12 January.—After the great riots at Bristol a special commission sat there to try those responsible and, on the 12th January, 1832, Christopher Davis was condemned to death for taking part in the outbreak and helping to set the New Gaol on fire. In words and in action he was proved to have behaved with great violence. After the conflagration he had been heard to say: "I have been to see the fire. It was a beautiful sight, only it did not burn fast enough to please me." Earlier he had been heard shouting: "This is the end of your damned magistrates and bishops, we'll send them to Hell!"

13 January.—On the 13th January, 1682, "at night, some young gentlemen of the Temple went to the King's Head Tavern, Chancery Lane, committing strange outrages there, breaking windows, etc., which the watch hearing of came to disperse them; but they sending for several of the watermen with halberts that attend their comptroller of the revel, were engaged in a desperate riot in which one of the watchmen was run into the body and lies desperately ill, but the watchmen secured one or two of the watermen."

14 January.—On the 14th January, 1772, Lord Northington, formerly Lord Chancellor, died in his sixty-fourth year. He was buried in the church of the place that gave him his title.

THE WEEK'S PERSONALITY.

When Lord Northington was dying and his family suggested that it was time for him to receive the last consolations of religion he readily agreed that a divine should be sent for. They named a certain bishop who had formerly been his friend, but with a flash of his old wit he replied: "No! That won't do. I cannot well confess to him for the greatest sin I shall have to answer for was making him a bishop." Accordingly it was simply the incumbent of the parish who attended him, and he joined in the last solemn ceremonies with edifying devotion and humility. So passed away a good and amiable man, though not a brilliant one, and an upright and capable judge above all suspicion of corruption or partiality. He had humour of a rather boisterous kind, and his jokes were not always printable, but all through his life he was a strictly moral and religious man. In person he was handsome and attractive, slimly built and very active and athletic till crippled by gout, the result of a hard-drinking youth. In after years when the malady overtook him he said: "If I had only known that these legs were one day to carry a Lord Chancellor, I'd have taken better care of them when I was a lad."

COMMON SENSE IN FOOTWEAR.

When a Welsh girl was charged at Marlborough Street Police Court recently with stealing two pairs of shoes it was alleged that she was actually wearing one of them when she left the shop. The other pair she was carrying under her cloak. "She wasn't wearing them too?" asked the magistrate, making things perfectly clear. "You can't wear two pairs of shoes!" exclaimed the accused indignantly. The remark reminds me of the story of a criminal advocate briefed to defend an old woman indicted for larceny. He had had to rush into court without having time to study the depositions, but he was soon in the middle of an eloquent speech. "And what, gentlemen," he asked, "did the poor woman say when the magistrate's clerk asked her for her defence. I will read you her very words and I think you will agree with me that they bear the stamp of conscious innocence." He rapidly searched in the papers. "Let me read you her exact words. Ha! Here we are. Oh! Hm!" He hesitated as he saw them, but continued: "Well, gentlemen, this uneducated woman does not put it as you or I would put it, but I said I would read her words and I will. What she says is: 'How the hell could I have the —— boots when he was wearing them?' And, gentlemen, I ask you, with some confidence, how the hell could she?"

RESCUE BY LAW.

Some recent doings in New York seem to have run on lines not unlike those of the great Jackson case in our own land, the legal declaration of independence of the English wife. This, however, was the case of the American daughter, for when lovely Eileen Herrick was held prisoner by her parents from her fiancé he got a judge's order for her release. They sent her to hospital and he went to the court again. They took her to the country and he followed by 'plane. Then Eileen wondered whether she wanted him to rescue her and said: "I'll phone him when I decide." Finally she rewarded his zeal matrimonially. Victorian England in 1891 provided action as dramatic as modern America when one Sunday after morning service Edmund Houghton carried off by force from the door of Clitheroe parish church the wife who refused to live with him. Dragged struggling into a carriage driven by a liveried coachman, she was taken to his home and held behind barricaded doors and windows. Her relatives galloping to the rescue laid siege to the house and called on the law to free her, invoking the magic power of *habeas corpus*. The Court of Queen's Bench, holding fast to the tradition of centuries that a wife belonged to her husband, rejected their plea, but the Court of Appeal ordered her release and gave the woman her independence.

Notes of Cases.

Court of Appeal.

Alexander *v.* H. Burgoine & Sons, Ltd.

Slesser, Clauson and Goddard, L.JJ. 1st December, 1939.

PRACTICE—JURY ACTION—COUNSEL INVITING JURY TO STOP CASE—COUNSEL'S DUTY.

Appeal from Macnaghten, J.

In a running down action tried before Macnaghten, J., and a common jury, counsel for the defendants in addressing the jury at the close of the plaintiff's case invited them to stop the case. He told them that counsel for the plaintiff would have the right to address them and that they could then stop the case if they liked. Macnaghten, J., expressed the opinion that he was not entitled to ask the jury to stop the case in that way. The jury returned a verdict for the plaintiff and judgment was entered accordingly.

GODDARD, L.J., in delivering the court's judgment dismissing the defendants' appeal, said that when a case had been heard and appeared perfectly clear, a judge often said to a jury: "Do you think it will be of any assistance to you if I sum up, or do you think you can give an opinion at once?" In such cases he should be careful to say that the plaintiff's counsel had still the opportunity of addressing them if he wished. But it was not in accordance with proper practice for counsel to invite the jury to stop the case before the judge had summed up, though no one was censuring counsel in this case, as what happened here was sometimes done without objection from the Bench. There should be no interference in the course of the trial between the judge and the jury. As any question which might arise in a criminal case would be dealt with in the Court of Criminal Appeal, his lordship abstained from stating his experience as a judge in criminal cases.

COUNSEL: *Fox-Andrews; Doughty*, K.C., and *Neil Lawson*.
SOLICITORS: *Hewitt, Woolacott & Chown; Butt & Bowyer*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

In re a Debtor (No. 13 of 1939).

Farwell and Morton, JJ. 11th December, 1939.

BANKRUPTCY—NOTICE SERVED ON DEBTOR BEFORE WAR—NON-COMPLIANCE—DIFFICULTY OF REALISING PROPERTY DURING WAR—RECEIVING ORDER—COURTS (EMERGENCY POWERS) ACT, 1939 (2 & 3 Geo. 6, c. 67), s. 1 (5).

Appeal from Great Yarmouth County Court.

In May, 1939, a bankruptcy notice in respect of a judgment debt of £140 was served on the debtor, who did not comply with it. In July the creditors presented a bankruptcy petition in the county court. At the hearing on the 9th October, after the outbreak of war, evidence was put before the court on behalf of the debtor to show that her inability to pay her debts was due directly or indirectly to the war. It appeared that in 1938 she had exercised an option which she had under a tenancy agreement to purchase a dwelling-house with an estate of 37 acres for £2,150, but that she had never completed the purchase. In July, 1939, she had begun negotiations with a prospective purchaser, a colonel, who had subsequently entered into a contract to purchase the property, but when war was declared he had been recalled to India and had not completed the purchase. Other attempts to sell the property were unsuccessful. The registrar refused to stay the proceedings under the Courts (Emergency Powers) Act, 1939, s. 1 (5), and made a receiving order.

FARWELL, J., dismissing the debtor's appeal, said that when she failed to comply with the bankruptcy notice she was unable to pay her debts. That inability was not the

result of any war, as there was then no war. Under s. 1 (5) the inability to pay debts was one which arose when the debtor failed to comply with the notice. The fact that she had since found it difficult to realise the property so as to satisfy the creditors was irrelevant.

MORTON, J., agreed.

COUNSEL: *B. Cloutman; L. Caplan.*

SOLICITORS: *Drake, Son & Parton; Philip Goodenday and Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Tomley *v.* Gower and Another.

Bennett, J. 30th November, 1939.

MORTGAGE—REGISTERED TITLE TO LAND—AGREEMENT TO SELL EQUITY OF REDEMPTION—REFUSAL OF MORTGAGEES TO RELEASE MORTGAGOR—PAYMENTS DUE UNDER MORTGAGE—FORECLOSURE PROCEEDINGS—PARTIES—ONUS OF PROVING INABILITY TO PAY DUE TO WAR—COURTS (EMERGENCY POWERS) ACT, 1939 (2 & 3 Geo. 6, c. 67), s. 1 (2) (*b*).

On the 28th July, 1938, the defendant, Gower, gave the plaintiffs a legal charge on certain land with a registered title to secure a sum of £14,000. The charge provided for the payment of interest on the 28th January and the 28th July in each year, at the rate of 5 per cent. per annum, and for repayment of the principal sum by equal half-yearly payments of £240 each, the first payment to be made on the 28th January, 1939. On the 25th November, 1938, the defendant, Gower, entered into a written contract with the defendant, McAdam, to sell him the premises comprised in the legal charge. According to the evidence of Gower, the sale was conditional on McAdam being accepted by the plaintiffs as the mortgagor and his being released by them from all liabilities under the charge According to the evidence of the solicitor to the plaintiffs, they had no knowledge of such a condition. By a transfer dated the 6th January, 1939, Gower transferred the property to McAdam. A proportion of the interest due on the 28th January, 1938, was allowed to him on the assumption, according to Gower's evidence, that he would pay that interest. Gower alleged that had the transfer not been completed he himself would have paid that interest as it fell due. He further alleged that the plaintiffs' solicitor had prepared the appropriate deed of release which had been duly executed by McAdam, but that they had never returned him the part of the deed intended to be retained by him, and that McAdam had never been registered at the Land Registry as the proprietor of the premises, as they declined to lodge their charge certificate to meet the transfer of the land. The plaintiffs' solicitor said that they had never executed the deed of release because the interest and the instalment on principal due on the 28th January, 1939, had not been paid, and that, by reason of the delays which occurred, the deed as drawn and engrossed required alteration. The interest and instalments due on the 28th January, 1939, and the 28th July, 1939, were still owing. After the outbreak of war, the plaintiffs sought leave, under the Courts (Emergency Powers) Act, 1939, s. 1 (2) (*b*), to proceed to foreclosure or sale of the property. Gower put forward evidence to show that he was unable to satisfy his obligations under the legal charge owing to circumstances directly or indirectly attributable to the war. The Registrar of the Manchester District Registry, having given the plaintiffs leave to proceed, Gower moved to set aside his order, contending, for the first time, that as he had parted with the equity of redemption he was not a necessary party to the proceedings. He also put in fresh evidence enumerating certain freehold properties owned by him, four of them being subject to substantial mortgages. He contended that but for the war he would have been able to satisfy out of his interests in those lands, his obligations under the legal charge. There was evidence on behalf of the plaintiffs that before the outbreak of war neither of the defendants had made them any offer or proposal with regard to the payment of the arrears.

BENNETT, J., said that Gower had contended that he was not a necessary party to the application, but his lordship was not satisfied that he might not still have some such interest in the security as made him a necessary party. The fact that the point was not raised before the Registrar raised a doubt in his lordship's mind about the whole Relationship between him and McAdam. There remained the question whether he had discharged the onus which rested on him of showing that, by reason of circumstances directly or indirectly attributable to the war, he was unable to perform his obligations. It was largely a matter of speculation whether he would have been able to perform them but for the war. His lordship was not satisfied that before the war he was in a position to do so. Though his position now was probably worse, he had not shown that his inability to perform the obligation was attributable to circumstances arising out of the war. The motion would be dismissed.

COUNSEL: *Hon. Denys Buckley*, for Gower; *George Maddocks*, for the plaintiffs. (McAdam was not represented.)

SOLICITORS: *Timbrell, Deighton & Nichols; Marco Blumberg*, of Manchester.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Moorgate Estates, Ltd. *v.* Trower.

Farwell, J. 15th December, 1939.

MORTGAGE—MORTGAGORS' COVENANT TO INSURE AGAINST WAR RISKS—INSURANCE IMPOSSIBLE—WHETHER COVENANT BROKEN—ACTION FOR FORECLOSURE—SET DOWN FOR HEARING BEFORE WAR—NO APPLICATION BY SUMMONS FOR LEAVE TO PROCEED—EFFECT—COURTS (EMERGENCY POWERS) ACT, 1939 (2 & 3 Geo. 6, c. 67), s. 1 (2) (*b*).

In March, 1936, the plaintiffs mortgaged a block of offices in the City of London valued at £259,000 to the defendants to secure repayment of a sum of £155,000 with interest at 4 per cent. per annum. The mortgagors covenanted to keep the premises insured against (*inter alia*) loss or damage by missiles or projectiles from or fired at aircraft to the full value thereof with the Atlas Assurance Company, Limited, or in some other insurance office, or with underwriters of repute to be approved by the mortgagees, provided that on default by the mortgagors to do so the mortgagees might themselves keep the premises insured at the mortgagors' expense. It was provided that if their power of sale should not have become exercisable, the mortgagees would not call in the principal sum before March, 1946. It was further provided that the power of sale should become immediately exercisable by the mortgagees if (*inter alia*) the mortgagors should fail to observe any of their covenants. On the 8th May, 1936, the mortgagees' solicitors, having received the policy of insurance, wrote to the mortgagors' solicitors requiring (1) that the insurance should be increased to the full value of the premises; and (2) that they should be insured in accordance with the covenant against loss or damage by missiles or projectiles from or fired at aircraft. Additional cover having been obtained, an endorsement slip was sent to the mortgagees' solicitors for attachment to the policy, which they retained. The respective solicitors did not notice then or when the policy was renewed that the additional insurance was not sufficient to comply with the covenant. Subsequently the mortgagors' solicitors became aware of this and wrote to the mortgagees' solicitors pointing out that the covenant obviously included war risks and that the mortgagors had not insured against these. They stated that in the circumstances the principal moneys were repayable immediately, and they gave notice requiring the mortgage to be paid off. The mortgagors' solicitors replied that they

had obtained the full cover which insurance companies would give and that the mortgagees had throughout accepted the policy as complying with the covenant. It appeared that from October, 1936, it would have been impossible to obtain a policy of insurance in full compliance with the terms of the covenant. In February, 1939, the mortgagors began an action against the mortgagees for a declaration that they were not bound to comply with the notice to pay off the mortgage. The mortgagees counter-claimed for an account of what was due to them under the mortgage, for payment of the principal sum of £155,000 with interest, that the mortgage and registered charge might be enforced by foreclosure or sale, for a receiver, and for possession of the premises. The action was set down for hearing before the outbreak of war in September, 1939.

FARWELL, J., said that this was not a case of frustration of the contract. Further, there was not an implied term in the contract that if such an insurance policy were an impossibility neither party should be entitled to rely on the failure to comply with the covenant. Also there was no estoppel preventing the mortgagees from setting up their claim. Further, they had not waived performance of the covenant. There had been a breach by the mortgagors of the terms of the covenant. The action should be dismissed with costs. It was objected that the mortgagees were not entitled to proceed with the counter-claim because they had not applied by summons under the Courts (Emergency Powers) Act, 1939, s. 1 (2) (*b*), for leave to institute proceedings for foreclosure or sale " or to take any step in any such proceedings instituted before the commencement of this Act." But the words " to take any step " did not refer to the hearing of an action set down for trial before the Act came into force. The Act did not prevent the action coming on for trial. The mortgagees were entitled to an order for an account and for the appointment of a receiver as the Act did not require express leave for such an appointment. They were also entitled to a foreclosure order *nisi*, but they could not enforce the judgment by foreclosure absolute or by sale without obtaining the court's leave by summons as provided by the Act.

COUNSEL: *Sir William Jowitt*, K.C., and *Gerald Gardiner*; *Harman*, K.C., and *Jopling* (for *C. M. White*, on war service).

SOLICITORS: *J. D. Langton & Passmore*; *Trower, Still and Keeling*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Smith *v.* Smith.

Hallett, J. 3rd November, 1939.

LANDLORD AND TENANT—LAND DRAINAGE—TENANT'S COVENANT TO PAY " ALL RATES TAXES AND OUTGOINGS "—WHETHER " OWNER'S DRAINAGE RATE INCLUDED "—LAND DRAINAGE ACT, 1930 (20 & 21 Geo. 5, c. 44), ss. 24 (2) (*a*), 26 (4) (*c*).

Action tried by Hallett, J.

The plaintiff was the tenant of certain land of which the defendant was the landlord, the lease providing by cl. 4 that the tenant should pay " all rates taxes and outgoings due in respect to the said premises during the said tenancy except tithe rent-charge and landlord's property tax." The plaintiff, having paid a certain sum to the drainage authorities for owner's drainage rate, claimed to be repaid that sum by the defendant. The defendant having disputed the claim, the present action was brought under s. 26 (4) (*c*) of the Land Drainage Act, 1930. By s. 24 (2) of the Act: " A rate made by a drainage board may be either—(*a*) an owner's drainage rate, that is to say, a rate raised for the purpose of defraying expenses incurred in connection with new works or the improvement of existing works and charges in respect of contributions to be made by the board to a catchment board; or (*b*) an occupier's drainage rate, that is to say, a rate raised for the purpose of defraying any other expenses or charges." By s. 26 (4) " . . . (*a*) every rate shall be assessed upon the person who at the date of the making of the rate is, or is deemed to be, the occupier of the hereditament; (*b*) the full amount of any rate may be recovered by the drainage board from any person who is . . . the occupier of the hereditament at any time during the period in respect of which the rate is made; (*c*) the occupier . . . shall be entitled to recover from the owner . . . any amount paid by him on account of an owner's drainage rate."

HALLETT, J., said that it was first to be observed that the occupier was by the Act of 1930 given a right of recovery against the owner, whereas by earlier Acts he had had only a right of deduction from the rent. There was nothing in the Act of 1930 or the earlier Acts to deprive the tenant of the right to contract out of that right of recovery. With regard to cl. 4 of the lease, the drainage rates in question, as a mere matter of English, clearly fell within the words " rates taxes and outgoings." They were not " taxes " in the ordinary sense, and counsel had referred to *Brewater* v. *Kidgell* (1698), Carth. 438, where the true limitation of the word " taxes " was interestingly explained. In any event, however, the rates in question were covered by the word " outgoings." Counsel for the plaintiff then argued that, although the words might be apt to include a particular burden, yet they might not have the effect of imposing it if it could be shown that such a burden was not in the contemplation of the parties when they made their contract. In *Stockdale* v. *Ascherberg*, Sir Richard Henn Collins, M.R., said [1904] 1 K.B. 447, at p. 450, that if a tenant made an agreement in unambiguous terms that he would bear all outgoings, the court could not throw aside the plain meaning of the language used and introduce some limitation difficult to define. Counsel for the plaintiff, however, referred first to *Mile End Old Town Vestry* v. *Whitby* (1898), 78 L.T. Rep. 80, where Wright, J., said that he thought that a rate of a new kind was not covered by an agreement to bear all outgoings. Counsel also referred to *Valpy* v. *St. Leonard's Wharf Co., Ltd.* (1903), 67 J.P. 402, where the doctrine advanced with regard to the contemplation of the parties was approved. Possibly, if the Land Drainage Act, 1930, had imposed an entirely new kind of rate a different result might have followed; but the drainage charges in question here were clearly not rates of a new kind. That was so notwithstanding the two distinctions between the earlier Acts and the Act of 1930, (*a*) that there was now a right of recovering instead of only a right of deduction, and (*b*) that whereas the rates were formerly assessed on the basis of acreage they were now assessed on that of rateable value. It was also immaterial for this purpose that the statutory machinery for drainage under the new Act was different from that under the earlier Acts. *Lodge* v. *Lancashire County Council* (1934), 152 L.T. Rep. 167, afforded further support for the view that the rate in question was not of a new kind. *Valpy* v. *St. Leonard's Wharf Co., Ltd.*, *supra*, could not be reconciled with *Stockdale* v. *Ascherberg*, *supra*, and was expressly disapproved in *Lowther* v. *Clifford* [1927] 1 K.B. 130. The defendant raised the further point that, even if the plaintiff's claim were otherwise good, he was estopped for maintaining it by a previous action in which the present plaintiff had been the defendant, and the defendant the plaintiff. That action had been a claim for rent, the issue being whether the rent contracted for over the material period was £100 or £125. The action was decided against the present plaintiff. Although it was not necessary to decide the point, he (his lordship) was of opinion that the plaintiff's failure to set-off his present claim against the claim for rent made against him in the earlier action did not estop him from raising that claim now; for he was not bound, under the Act of 1930, to make his claim only by way of deduction. If the present claim had been made

by way of deduction, estoppel might have arisen; it was however presented as a separate claim to be recouped a certain sum. The action failed.

COUNSEL: *E. Brightman* (for *J. R. Adams*, on war service); *S. G. Turner*, K.C., and *Gordon Alchin* (for *H. E. R. Boileau*, on war service).

SOLICITORS: *Smiles & Co.*, for *Welchman, Dewing & Wace*, Wisbech; *Lee, Ockerby & Co.*, for *Whittome & Co.*, Wisbech.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

War Legislation.

(*Supplementary List, in alphabetical order, to those published, week by week in* THE SOLICITORS' JOURNAL, *from the 16th September, 1939, to 6th January, 1940, inclusive.*)

Statutory Rules and Orders.

No. 1 **Customs.** The Export of Goods (Control) Order dated January 1.

No. 2. Customs. The Export Licence—Coal, Coke and Manufactured Fuel. Open General Export Licence, dated January 1. (No. G.L. 218.)

No. 1892. Customs. The Import of Goods (Prohibition) (Consolidation) Order, dated December 30.

No. 7. **Emergency Powers (Defence).** The Animal Oils and Fats (Provisional Control) Amendment Order, dated January 3.

No. 1889. Emergency Powers (Defence). The Home Produced Bacon (Distribution) (No. 2) Order, dated December 29.

No. 4. Emergency Powers (Defence). The Butter (Licensing and Control) Order, dated January 1.

No. 5. Emergency Powers (Defence). The Butter (Maximum Prices) Order, dated January 1.

No. 1893. Emergency Powers (Defence). The Cheddar and Cheshire Cheese (Returns) Order, dated December 30.

No. 3. Emergency Powers (Defence). The Control of the Cotton Industry (No. 2) Order, dated January 3.

No. 9. Emergency Powers (Defence). Order, dated January 4, amending the Food Control Committees (Constitution) Order, 1939.

No. 1888. **Factories (Separation for Certain Purposes) Regulations,** dated December 21.

No. 1880. **House to House Collections Act** (Postponement) Order in Council, dated December 20.

No. 1879/S. 130. **Shops (Scotland) Regulations,** dated December 28.

Provisional Rules and Orders.

Mental Deficiency (Amendment) Regulations, dated January 1.

Road Traffic and Vehicles. The Motor Vehicles (Construction and Use) Amendment Regulations, dated December 18.

Non-Parliamentary Publications.

STATIONERY OFFICE.

List of Emergency Acts and Statutory Rules and Orders. Revised to December 31, 1939.

BOARD OF TRADE.

Export Control. List of Goods of which the Exportation from the United Kingdom is controlled under the Export of Goods (Control) Order, 1940, showing the position on January 15.

TREASURY.

Defence Regulations, 1939, as amended up to and including December 11, 1939, together with a table of Acts of Parliament amended, suspended or applied by Defence Regulations and Orders made thereunder and by Orders in Council made under the Chartered and Other Bodies (Temporary Provisions) Act, 1939.

Copies of the above S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

The next Quarter Sessions of the Peace for the Borough of Stamford will be held at the Town Hall, Stamford, on Wednesday, 31st January, at 11.30 a.m.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve that the honour of knighthood be conferred upon Mr. R. E. DUMMETT on his appointment as Chief Magistrate of the Police Courts of the Metropolis.

The following appointments, promotions, transfers and re-appointments are announced in the Colonial Legal Service:—

Mr. R. H. DRAYTON, Attorney-General, Tanganyika Territory, to be Legal Secretary, Ceylon; Mr. W. T. S. FRETZ, Assistant Judge, Zanzibar, to be First Puisne Judge, British Guiana; Mr. J. B. GRIFFIN, Attorney-General, Bahamas, to be Solicitor-General, Palestine; Mr. J. C. HOWARD, Legal Secretary, to be Chief Justice, Ceylon.

Mr. J. E. ARNOLD JAMES, Town Clerk of Finsbury, has been appointed Town Clerk of Stepney. Mr. THOMAS JAMES WILSON, at present deputy Town Clerk of Finsbury, has been appointed Town Clerk of Finsbury in succession to Mr. James. Mr. James was admitted a solicitor in 1918 and Mr. Wilson was admitted in 1936.

Mr. JOSEPH BAKER, barrister-at-law, of Lincoln's Inn, has been elected Chairman of the Assessment Committee for the Holborn assessment area for the sixth successive year. He was called to the Bar by Gray's Inn in 1918, and is also a member of Lincoln's Inn.

Notes.

Mr. Ernest E. Bird has been re-elected chairman of the board of directors of the Legal & General Assurance Society, Ltd., for the ensuing year and The Hon. W. B. L. Barrington re-elected vice-chairman.

Lady Dickens, widow of Sir Henry Dickens, K.C., Common Serjeant of the City of London for fifteen years and sixth child of Charles Dickens, died at Mulberry Walk, Chelsea, on Wednesday, 3rd January.

For the seventh time since 1543 there were no prisoners for trial at the North Yorkshire Quarter Sessions held at Northallerton on the 4th January. The Chairman, Sir Francis Dunnell, who was re-elected Chairman, was presented with white gloves. Sir Bedford Dorman was appointed Vice-Chairman.

The Equity & Law Life Assurance Society announce that in the life department the gross sum assured under policies issued in 1939 was £1,947,649, and the net sum assured £1,848,149. Sums assured by sinking fund policies amounted to £349,459. Annuities to the number of 800 were issued, the amount of annuity being £72,315 and the consideration £858,894.

Several antiques, including a massive chair used by the judge in 1770, were damaged in a fire recently at Nottingham in the room of the Clerk of the Peace, Mr. Tweedale Meaby. His wig and Acts of Parliament affecting the county were destroyed. Two drums carried by the Duke of Kingston's Light Infantry in the war of 1774 and muskets carried by the Notts Volunteers during the Napoleonic wars were saved.

Approximately one-third of the total number of practising solicitors are now engaged on national service, either with the armed forces or in civil defence. This information, states The Law Society, has been obtained from *questionnaires* sent to all solicitors, of whom over 15,000 replied. Although 5,780 are over fifty years of age, the Council feels that many more, particularly among those unsuitable for active service, may wish to register with the Society their willingness to undertake Government work. It has accordingly appointed an officer to examine the position of solicitors in relation to national service, and to ask those able and willing to undertake such duties to communicate with the Secretary, Law Society's Hall, Chancery Lane, W.C.2.

The Records Committee of the Essex County Council would be glad to learn of the existence of court rolls, rentals, maps and other manorial documents in the possession or custody of solicitors or other persons living outside Essex. The Essex Record Office, County Hall, Chelmsford, is a County Manorial Repository scheduled by the Master of the Rolls under the Law of Property (Amendment) Act, 1924, and court rolls, etc., for nearly 300 Essex manors have now been deposited with the County Council. The Records Committee would greatly appreciate the receipt of further manorial documents, deeds, etc., and all deposits may be reclaimed, if so desired, at any time in the future. The Clerk of the County Council will be pleased to reimburse the cost of carriage.

WINTER ASSIZES.

Days and places fixed for holding the Winter Assizes 1940, are as follows :—

NORTH-EASTERN CIRCUIT (Mr. Justice Croom-Johnson, Mr. Justice Cassels) : Tuesday, 30th January, at Newcastle ; Saturday, 10th February, at Durham ; Monday, 19th February, at York ; Monday, 26th February, at Leeds.

COUNTY COURT CALENDAR FOR JANUARY, 1940.

The following are the dates of sittings for Circuit 12, which arrived too late for inclusion in the Calendar in our issue of the 30th December :—

Circuit 12—Yorkshire.

HIS HON. JUDGE FRANKLAND

*Bradford, 9 (R.B.), 10, 12, 23, 24 (R.B.) 26 (J.S.), 30
Dewsbury, 4 (R.), (R.B.), 9
*Halifax, 4, 5 (J.S.)
*Huddersfield, 3 (J.S.)
Keighley, 18
Otley, 17
Skipton, 19
Wakefield, 11 (R.B.), 16, 23 (R.)

* = Bankruptcy Court
(R.) = Registrar's Court only
(J.S.) = Judgment Summonses
(R.B.) = Registrar in Bankruptcy

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT. No. 1.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
Jan. 15	Blaker	More	Jones
,, 16	More	Reader	Ritchie
,, 17	Reader	Andrews	Blaker
,, 18	Andrews	Jones	More
,, 19	Jones	Ritchie	Reader
,, 20	Ritchie	Blaker	Andrews

	GROUP A.		GROUP B.	
DATE.	MR. JUSTICE BENNETT. Witness.	MR. JUSTICE SIMONDS. Non-Witness.	MR. JUSTICE CROSSMAN. Witness.	MR. JUSTICE MORTON. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Jan. 15	Blaker	Reader	Andrews	Ritchie
,, 16	More	Andrews	Jones	Blaker
,, 17	Reader	Jones	Ritchie	More
,, 18	Andrews	Ritchie	Blaker	Reader
,, 19	Jones	Blaker	More	Andrews
,, 20	Ritchie	More	Reader	Jones

HILARY SITTINGS, 1940.

COURT OF APPEAL.

One Division of the Court will hear Interlocutory and Final Appeals from the Chancery Division, Palatine Appeals, Appeals from the Chancery Division (In Bankruptcy) and Appeals from the Probate and Divorce Division

A Second Division of the Court will hear Interlocutory and Final Appeals from the King's Bench Division, County Court Appeals and Appeals re The Workmen's Compensation Acts.

HIGH COURT OF JUSTICE.

CHANCERY DIVISION.

Before Mr. Justice FARWELL.

At the beginning of the Sittings Mr. Justice FARWELL will sit for the disposal of the Non-Witness List.

Mondays—Bankruptcy Business.

Bankruptcy Judgment Summonses will be taken on Mondays, 22nd January, 12th February and 4th March.

Bankruptcy Motions will be taken on Mondays, 15th January, 5th and 26th February.

A Divisional Court in Bankruptcy will sit on Mondays, 29th January, 19th February and 11th March.

GROUP A.

Before Mr. Justice BENNETT.

(Witness List.)

Mr. Justice BENNETT will sit daily for the disposal of the List of Witness Actions.

Before Mr. Justice SIMONDS.

(Non-Witness List.)

Mondays ..	Chamber Summonses.
Tuesdays ..	Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays	Adjourned Summonses.
Thursdays	Adjourned Summonses. Lancashire Business will be taken on Thursdays, 18th January, 1st, 15th and 29th February and 14th March.
Fridays ..	Motions and Adjourned Summonses.

GROUP B.

Before Mr. Justice CROSSMAN.

(Witness List.)

Mondays ..	Companies (Winding Up) Business.
Tuesdays .. Wednesdays Thursdays Fridays ..	The Witness List.

Before Mr. Justice MORTON.

(Non-Witness List.)

Monday ..	Chamber Summonses.
Tuesdays ..	Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays	Adjourned Summonses.
Thursdays	Adjourned Summonses.
Fridays ..	Motions and Adjourned Summonses.

THE COURT OF APPEAL.

A List of Appeals for hearing, entered up to Thursday, 21st December 1939.

FROM THE CHANCERY DIVISION.

(Final List.)

For Judgment.

Bradford Third Equitable Benefit Building Society v Borders (M.R., Scott and Clauson, L.JJ.

For Hearing.

Armour v Liverpool City Corporation
Webb v Frank Bevis Ltd
Re Barnard, dec Cole-Hamilton v Stuart
Re Same Same v Same
Re Same Same v Same
Re Payne, dec Poplett v H.M. Attorney-General
Re Same Same v Same
Percival v Jordan
Redditch Benefit Building Society v Roberts
James Millward & Co Ltd Re Companies Act, 1929
Re Vegetable Health & Beauty Products Ltd Re Companies Act, 1929
Beadon v Clifford
Re T H Downing & Co Ltd Re the Companies Act, 1929

FROM THE CHANCERY DIVISION.

(Interlocutory List.)

Re Setton, dec Lassin v Setton

FROM THE PROBATE AND DIVORCE DIVISION.

Ettenfield v Ettenfield
Sotherden v Sotherden
Mackenzie v Mackenzie

FROM THE COUNTY PALATINE COURT OF LANCASTER.

(Final List.)

Re Birchall, dec Re Valentine, dec Kennedy v Birchall (with leave)
Re The Donegal Tweed Co Ltd Re Companies Act, 1929

FROM THE KING'S BENCH DIVISION.

(Final and New Trial List.)

Rimmer v H Littlewood Ltd
Parry v The Aluminium Corporation Ltd
Rodgers v Park Gate Iron & Steel Co Ltd
Banco Central de Chile v The Midland Bank Ltd (not before Jan 24)
Norwood v Leeds Industrial Co-operative Society Ltd
Smith v William Davies & Son (a firm)
Same v Same
Cresswell v Liverpool Corporation
Eastwood v Pearlberg (not before April 10)
Burke v Elder Dempster Lines Ltd
Wrenshall v Kershaw
Coulthurst v Clarke
S William Haines Bothers (a firm) v Hubert Adrian Middleton D'Este
Brackenborough v The Spalding Urban District Council
Same v Same
Grove v Southend-on-Sea Borough Council
Brindle v Shellabear
Llewellyn v May
Gray v Luck
Daniels v Hartman
Clark v Walters
Murrell Steamship Co Ltd v Nordenfjeldske Steamship Services Ltd
Cassin v Rusts Ltd
Same v Same
Same v Same
B Sunley & Co Ltd v Cunard White Star Ltd
Broome v Pardess Co-operative Society of Orange Growers (Estd. 1900) Ltd
Keble v Milburn
The Public Trustee v Pearlberg
Gorman v Barnard
McQuaker v Goddard
Evans v Owen
Franceschini v Hulton Press Ltd
The King v Justices of the Peace for the County of Stafford
The King v The Army Council (exparte Sandford)
Goodbarne v Buck
Liffen v Watson
Coltman v A E Balch (Putney) Ltd
Joseph Evans & Sons (Wolverhampton) Ltd v Technoprom-import (not before Feb. 28)
Jacobs v Kerstein
Synplas Ltd v Kinistel Ltd
Moore v Cameron
Rosan v W R Wood (Motors) Ltd
Oulu Osakayetio v Arnold Laver & Co Ltd Re Arbitration Acts, 1889 & 1934
K & C Development Co Ltd v Feldman
Sasieni v Gee
Kittler v Miller
Same v Same
Barclays Bank Ltd v Cuthbert
Wright v London Brick Co Ltd
Karflex Ltd v Burton
Brown v Lissenden
Evans v Jones
Watson v Buckley
Rostron v Sunderland Borough Council
Medd v Cox
C H Butterworth (Bury) Ltd v Prestwich U.D.C.
Wills v Bingham
Lucas v Executors of James Mills Ltd
Todd v Wright

(Interlocutory List.)

Gonzalez v Machado
Greaves v Nabarro
Altaras v Manchester Haulage Ltd
Re Courts (Emergency Powers) Act, 1939 Metropolitan Properties Co Ltd v Purdy
Massey v Liverpool Corporation
Smith v D Smith & Sons Ltd

FROM COUNTY COURTS.

Russell v E R Terry Ltd
Chapelton v Barry Urban District Council
Youngs v Youngs
The Clyne Estates Company v Wickham
Goodman & Sterling Ltd v Jones
Chisholm v Scott
Loader v Loader
Wilson v Walker
Stokeley v Rayner
Pallant v Wright
John Toomer & Son Ltd v Atkins
Urban District Council of Orrell v Hewitt
Bather v Kensington Borough Council

Reed v Fullwood
Herling v Reich
Champ v Hart
Berwick v Sintes
Chelsea Yacht & Boat Co Ltd v Wallasea Bay Yacht Station Ltd
Friis v Paramount Bagwash Co Ltd

Re THE WORKMEN'S COMPENSATION ACTS.

Hayward v J Lyons & Co Ltd
Brown v The Sherwood Colliery Co Ltd
Smith v The Mickleover Transport Co Ltd (pt hd) (s.o. for registration of agreement in County Court)

FROM THE ADMIRALTY DIVISION.

(Final List.)

(*With Nautical Assessors.*)

"Varmdo" The Owners of S.S. or Vessel "Jeanne M" and her Master and Crew (suing for their lost effects) v Owners of S.S. or Vessel "Varmdo"

Standing in the "Abated" List.

RE THE WORKMEN'S COMPENSATION ACTS.

McGregor v Gow & Hollands Ltd (s.o. generally March 30, 1939)
Cain v Shell Mex & B P Limited (s.o. generally July 6, 1939)

FROM COUNTY COURTS.

Pullen v Stell (s.o. generally—liberty to restore Feb. 28, 1939)
Thistle v Normans (Approval Stores) Ltd (s.o. generally, —leave to restore October 26, 1939)

FROM THE CHANCERY DIVISION.

(Final List.)

Re Heaven Indenture de Arellano v Heaven (s.o. generally—liberty to restore, May 5, 1939)

FROM THE KING'S BENCH DIVISION.

(Final and New Trial List.)

Hogan v The Pacific Steam Navigation Co (s.o. for P.P. Appln.) (June 30, 1939)
MacMichael v The Commissioner of Police for the Metropolis (s.o. June, 1939)
Hughes v Falconer (a firm) v Newton (s.o. generally, l.a.r.)

(Revenue Paper—Final List)

Batty (H M Inspector of Taxes) v Schroder (s.o. generally, l.a.r.)

HIGH COURT OF JUSTICE—CHANCERY DIVISION.

There are two Lists of Chancery Causes and matters for hearing in Court. (I) Adjourned Summonses and Non-Witness Actions; and (II) Witness Actions, every proceeding being entered in these Lists without distinction as to the Judge to whom the proceeding is assigned. During the Sittings, warning will be given of proceedings next to be heard before each of the five Judges. Applications in regard to a "warned" matter should be made to the Judge before whom it is "warned."

Applications in regard to a proceeding which has not been "warned," should usually be made to the senior of the two Judges taking the list in which the proceeding stands.

Motions, Short Causes, Petitions and Further Considerations will be taken by the Judge taking the Non-Witness List who belongs to the group to which the proceeding is assigned.

Group A.—Mr. Justice BENNETT and Mr. Justice SIMONDS.

Group B.—Mr. Justice CROSSMAN and Mr. Justice MORTON.

Mr. Justice FARWELL will deal with the work in either Group as the state of the business requires.

The Adjourned Summons and Non-Witness List will be taken by Mr. Justice SIMONDS and Mr. Justice MORTON.

The Witness List will be taken by Mr. Justice BENNETT and Mr. Justice CROSSMAN.

Motions, Short Causes, Petitions and Further Considerations in matters assigned to Judges in Group A will be heard by Mr. Justice SIMONDS.

Motions, Short Causes, Petitions and Further Considerations in matters assigned to Judges in Group B will be heard by Mr. Justice MORTON.

Companies (Winding Up), Liverpool and Manchester District Registries and Bankruptcy business will be taken as announced in the Hilary Sittings Paper.

Set down to 21st December, 1939.

Mr. Justice FARWELL.

Retained Matters.

Non-Witness List.

Re Richardson, dec Jackson v Holmes (s.o. generally—lib restored)

Witness List.

Lee Norman v Collier (s.o. generally to be mentioned)
Re Tonge, dec Lee Norman v Tonge (s.o. generally to be mentioned)
Tonge v Tonge (s.o. generally to be mentioned)
Tonge v Spurrell (s.o. generally to be mentioned)

Mr. Justice BENNETT and Mr. Justice CROSSMAN.

Witness List.

Before Mr. Justice BENNETT.

For Judgment.

Procedure Summons.

Geiringer v Swiss Bank Corpn

For Hearing.

Retained Matters.

Non-Witness List.

Re Courage, dec Kempe v Sommery-Gade (pt hd)
Re Hunn's Legacy Hunn v. Lange (pt hd)
Re Courts (Emergency Powers) Act, 1939 Re Branch Nominees Ltd Re Plaza Garages Ltd (s.o. Feb. 23)
Re White, dec Clare v Parker (s.o. generally)

(*In Camera.*)

Re Higham (an Infant) (pt hd)

In Court.

Witness List.

Bradford Third Equitable Benefit Building Society v Marriott
Re Cleadon Trust Ltd (Application of Robert Creighton) (pt hd)

On Thursday, 11th January, 1940, the following will be in the List:—

Witness List.

Scott v Frank F Scott (London) Ltd

The next to be heard are:—

Mitchell v Bysouth (fixed for Jan. 15)
Cline v London Express Newspaper Ltd
Re Williams Spencer v Williams
The British Thomson-Houston Co Ltd v Tungstalite Ltd (fixed for Jan. 24)

Before Mr. Justice CROSSMAN.

Retained Matters.

Non-Witness List.

Re Heath, dec The Public Trustee v Fuller (restored)
Re Wolson, dec Wolson v Jackson (restored)

In Chambers.

Re Macdonald Rooke v Macdonald (s.o. Jan. 22)

On Thursday, 11th January, 1940, the following will be in the List:—

KING'S BENCH DIVISION.

(*Sitting as an additional Judge of the King's Bench Division.*)

Long Non-Jury.

Acme Flooring & Paving Co (1904) Ltd v John Wolstenholme & Son Ltd

The next to be heard are:—

CHANCERY DIVISION.

Witness List.

Hingley v Whitworth
Eastbourne Mutual Building Society v Hicks (restored)
Williams v Lazarus (restored)
Stoneham v Fletcher
Samuel French Ltd v Seivier
Shenton v Tyler (restored)

COMPANIES COURT.

Petitions.

Arthur W North & Co Ltd (to wind up—ordered on May 10, 1937, to s.o. generally)
A W Wood & Co Ltd (same—ordered on July 17, 1939, to s.o. generally)
Whayman Hotels Ltd (same)
Charles Erard Ltd (same)
J Ross Mansell Ltd (same)
Greatrix Pearson Ltd (same)
Cambridge Brick Company (1937) Ltd (same)
Sovereign Gowns (Oxford Street) Ltd (same)
Baxter Geoffrey & Co Ltd (same)
Kinistil Ltd (same)
Walter Briggs Ltd (same)
Auteuil Hat Ltd (same)
W Jay & Son Ltd (same)
John Shaw (Rayners Lane) Ltd (same)
Moons Garages Ltd (same)
Bolsom Brothers (1928) Ltd (same)
Christchurch Times Ltd (same)
Harpman's Institute of Endonasal Reflex Therapy Ltd (same)
Morley & Hood Ltd (same)
J Lewis (Furnishers) Ltd (same)
T W Ashworth Ltd (same)
Dr Maurer's Products Ltd (same)
Leslie Smith & Co Ltd (same)
Woodcraftsmen Ltd (same)
Aubrey Ltd (same)
R Walters Ltd (same)
Mylo (Caterers) Ltd (same)
H & A Randall (Cabinet Makers) Ltd (same)
Cash Homes Ltd (same)
Myers Amusements and Automatics Ltd (same)
Ben (Covent Garden) Ltd (same)
Doric Cinema (Newmarket) Ltd (same)
Colchester Sand & Ballast Co Ltd (same)
A Barson & Co Ltd (same)
Lewis Brothers (Bristol) Ltd (same)
Bazeley Brothers Ltd (same)
M Kanal Ltd (same)
S Markheim Ltd (to confirm reduction of capital)
Welsh Town-Planning and Housing Trust Ltd (same)
British Burmah Petroleum Co Ltd (same)
Rothwell Empire Ltd (same)
Tano Gold Dredging Ltd (same)
West African Gold Corporation Ltd (same)
Decca Gramophone Co Ltd (same)
Old Lodge Estate (Purley) Ltd (same)
Incorporated Catholic Girls Society (to confirm alteration of objects)
Hegeman-Harris Company Incorporated (to sanction scheme of arrangement)
D Hill Carter & Co Ltd (to sanction scheme of arrangement and confirm reduction of capital)
M Z Copper Syndicate Ltd (to restore name to register)

Motion.

H B E Vendors Ltd

Adjourned Summonses.

Marina Theatre Ltd (ordered on May 10, 1933, to s.o. generally—liberty to apply to restore)
Pictos Ltd (ordered on March 29, 1935, to s.o. generally—liberty to apply to restore)
Bottlers and General Engineers Ltd (with witnesses—ordered on June 17, 1937, to s.o. generally—liberty to apply to restore)
Cleadon Trust Ltd (ordered on April 12, 1938, to s.o. generally)
Blue Belle Motors Ltd
Same
Same
Electric Truck and Battery Co Ltd
Same
Baird Brothers Ltd
M G Farm Ltd
Great Work Tin Mines Ltd

Mr. Justice BENNETT and Mr. Justice CROSSMAN.

Witness List.

Fox v Duboff (s.o. for amendment)
Radium Utilities Ltd v Humphris (s.o. for security)
Nathan v Walker (s.o. for Attorney-General)
New Pavilion (Gillingham) Ltd v Munday (s.o. for security)

John Carle Ltd v Hill
Berkeley & Young Ltd v Stillwell
Darby & Co Ltd
Micescu v Kroening (s.o. for security)
The Benjamin Electric Ltd v Veritys Ltd
Same v Same
Same v Same
Same v Same
Smart v Barrett (restored)
Progress Building Ltd v Pilgrim
Houslop v More
The State of Spain v The Chancery Lane Safe Deposit & Offices Co Ltd
Nettleship v Cooper
Mayer v Evenlite Tube Lamp Developments Ltd
Northam Warren Ltd v S Prown & Son (General Warehousemen) Ltd
Martin v Browning
Sykes v Smith
J & I Batten & Co Ltd v Mincing Lane Offices Company (1928) Ltd
Macleans Ltd v Cooper
The Sturvevant Engineering Co Ltd v Beck & Pollitzer (a firm)
Collier v Fish
Hayes v Hirst (not before Feb. 14)
Boorer v Paine Manwaring & Lephard Ltd
Re Cox, dec Cox v Gordon
Re Century Refrigeration Co Ltd Re Companies Act, 1929
Natural Chemicals Ltd v Amblins (Chemists) Ltd
Whibley v Whibley
Smith v The Bridlington Land Co Ltd
Maloney v Mason
Darlington v W Darlington & Sons Ltd
Shuttleworth v Evans
Dyson v National Guardian Investment Co Ltd
Wright v Stevens
Barclays Bank Ltd v Holt
A E Hawley & Co Ltd v Shankland
Re Thomas, dec Bowen v Thomas
Miller v Quick (not before May 1, 1940)
Drew v Wakefield Building Society
A Lewis & Co (Westminster) Ltd v Bell Property Trust Ltd
Gilbey v Trower
Barnfield v Westminster Bank Ltd
Walter A Masters Ltd v Masters Fraser & Co Ltd
Waghorn v Stephens
Trustee of Shribman v Hytner
King v Veysey
Foster v Foster
Mid Hill Homesteads Ltd v Marcham
Re Gabe, dec Williams v Gabe
Theodorou v Theodorou
Re G Blundell & Sons Ltd Re The Companies Act, 1929
Dresden v Elliott
Bampton v Hutton
Masson Seeley & Co Ltd v Hill Bros (Service) Ltd
The Temperance Permanent Building Society v Cook
Weeks v The National Amalgamated Stevedores and Dockers Union
Goldsmid-Montefiore v Cavendish Land Co Ltd
Hicks v Preston
Roberts v Gallina
Bowler v Kempster & Williams Ltd
Barnes v Ansell
Vyner v Cox
Trustee of Iles v Belle Vue (Manchester) Ltd
Radford v Beevor
Newman v Wright
Innoxa (England) Ltd v Herberts Drug Store (a firm)
Glendinning v Sax
Swain v Grover
Davis v Redgrave
Noakes v Sheppard
West v Oppenheim
Re Amalgamated Stone & Lime Co Ltd Re The Companies Act, 1929
Re Same Re Same
King Features Syndicate Inc v O & M Kleeman Ltd

Mr. Justice SIMONDS and Mr. Justice MORTON.

Non-Witness List.

Before Mr. Justice SIMONDS.

For Judgment.

Abingdon Borough Council v James

For Hearing.

Assigned Matters.

Re Patents & Designs Acts, 1907–1938 Re Grove's Letters Patent No. 454,088
Re Patents & Designs Acts, 1907–1938 Re Zeiss Ikon Aktiengesellschaft Letters Patent No. 419,915
Re Patents & Designs Acts, 1907–1932 Re Iverson's Letters Patent
Re Patents & Designs Acts, 1907–1939 Re Airspeed Ltd and A H Tiltman's Letters Patent No. 397,964
Re Same Re Same

Retained Matters.

Witness List.

Stokes v Lilleshall Co Ltd action and counter-claim (restored) (fixed Jan 17)

Petition.

Gumm v Hallett (s.o. generally—liberty to amend and restore)

Short Causes.

Pearless v Stephens
Re Slater, dec Exley v Smith

Petition.

Re Huber's Settlement

Procedure Summonses.

Mansel-Pleydell v Walter Hill & Co Ltd
Same v Same (s.o. to come on with trial)
Hon Co Ltd v Sommer

Further Consideration.

Re Hant, dec Hant v Hant

Before Mr. Justice MORTON.

Retained Matters.

Non-Witness List.

Re Harding's Vesting Deed Prideaux-Brune v Prideaux-Brune
Re Ward, dec Nickinson v Ward
Re Lamerton, dec Lamerton v Roberts
Re Buchan, dec Buchan v Lund
Re Miles' Contract Re Law of Property Act, 1925 Miles v Williams

Petition.

Re Astor's Settlement Trusts Re Trustee Act, 1893 (s.o. generally)

Short Cause.

Re Harland, dec Whytock v Ieam

Petitions.

Farrow v Smith
Chattaway v Horton
Re Mann Crossman & Paulin Ltd Re Road Traffic Act, 1930

Procedure Summonses.

Re Griffiths Application Re Davies Contract Re Courts (Emergency Powers) Act, 1939
Re Thornton's Settlement Ashanti Mining Trust Ltd v Thornton
Re Same Same v Same
Re Cousen, dec Killick v Wright
Re Baldwin, dec Harvey v Bishop of Truro
Re Webb, dec Burnett v Jacks
Re Harris, dec The Public Trustee v Moore
Farrow v Smith
Re Charters, dec Coates v Holme
Re Luck, dec Walker v Luck
Re Fawcett, dec The Public Trustee v Dugdale
Re Creese, dec Clutterbuck v Franklin
Re Earle, dec Re Brodrick, dec Burkinshaw v Midland Bank Ltd
Re Pendarves, dec Re Pendarves Settlement Barclays Bank Ltd v Pendarves
Beck v Priestman (fixed Jan 11)
Same v Same (fixed Jan 11)
Re Wicks Settlement The Public Trustee v Wicks
Re Seager, dec Gledhill v Seager
Re Dart, dec Royal Exchange Assurance v Peacock
Re Shepperson, dec Crick v Portess
Re Watson, dec Barclays Bank Ltd v Mills
Re Dickinson Settlement Trusts Harris v Dickinson
Re Williams, dec Elkington v Williams
Re Earle, dec Tucker v Donne
Wakefield Building Society v Drew (to be heard with witness Action No. 47)
Re Johnson, dec Thomasson v Puckle
Re Hodge, dec Hodge v Griffiths
Hollis v Wingfield
Re Fremlin, dec The Public Trustee v Flint
Re Courts (Emergency Powers) Act, 1939 Brighton & Sussex Building Society v Mole
Halifax Building Society v Auton
Re T N Ward's Settlement Ward v Ward
Re Coote, dec Cavers v Kaye
Re Reader, dec Tompsett v Wallis
Re Dinnington Property Trusts de Windt v Nabarro
Re Courts (Emergency Powers) Act, 1939 Re Barclays Bank Ltd Re Punch Bowl Hotels Ltd
Re Lowe, dec Lloyds Bank Ltd v Dougherty
Re Spurr, dec Nisbet v Spurr
Re Lowe's Settlement Newton v Sismey
Re Emberton, dec Davies v Emberton (to be heard with motion on Jan 12)
Re Jones, dec Re Williams, dec Jones v Owen
Re Gorman, dec Awdry v Dunlop
Re Atkinson's Transfer of Mortgage Mostyn Estates Ltd v Lloyds Bank Ltd
Re Welsh Church Acts, 1914 and 1919 Re Tithe Act, 1936 Commissioners of Church Temporalities in Wales v Representative Body of the Church in Wales
Re Fletcher, dec Fletcher v Fletcher
Re Fox, dec Fox v Lea
Re Harrison, dec Harrison v Armstrong
Re Richardson, dec McCreath v Richardson
Re Parnall, dec Martin v Barclays Bank Ltd
Re Thorpe, dec The Yorkshire Penny Bank Ltd v Thorpe

KING'S BENCH DIVISION.

DIVISIONAL COURT LIST.

NOTICE.—The Solicitors for each party are requested to inform the Chief Clerk of the Crown Office, in writing, as soon as possible, as to the probable length of each case and the names of Counsel engaged therein

For Judgment.

Middlesex County Council v Essex County Council (c.a.v. Dec 19, 1939) (L.C.J., Charles and Hilbery, JJ.)

For Argument.

Tyas v Doncaster Amalgamated Collieries Ltd
Rating Authority of Barking v Central Electricity Board
Royds, L J W v Dickinson
Royds, A L v Dickinson
Trebanog Working Men's Club & Institute Ltd v Macdonald
Monkwearmouth Conservative Club Ltd v Smith
Thornton v Mitchell
Bayliss v Chatters
Wimborne & Cranborne Rural District Council v East Dorset Assessment Committee
Charlton v John Bowes & Partners Ltd and ors
Rubie v Faulkner
West Cheshire Water Board v Crowe
Reynell v Dean
Barlow v Fraser
Mayor &c of Leicester and ors v Derwent Valley Water Board and ors
Mills v Haslewood & Sons Ltd
Werner v E Whiteway & Co Defendants Neudorfer Kommissar of Narkus & Werner
Osborne v Nicholls
Knowles v Chandlers Ford Laundry Ltd
Lewis v Osborn
Scott v Warren
In the matter of Peel an infant
England v Kerry
Thompson v Pearcey
The King v N J Laski, Esq and ors
Shineld v Doughty
The King v Southern Essex Assessment Committee and anr
Shard Bridge Co and anr v Jones
Swift v Barrett
The King v Electricity Commissioners
The King v Electricity Commissioners
Harbans Sing Batra v Cumberland Hotels Ltd

Mayor &c of Ryde v Assessment Committee for the Isle of Wight Assessment Area
Rowe v Clatworthy
Fulham Borough Council v A B Hemmings Ltd
The King v G Blaiklock Esq and ors, JJ's for Kent
Bignell v Thompson
Private Street Works Act, 1892, re Jestys Avenue, Broadway, Weymouth
In re a Solicitor
Watkins v Griffiths
The School of Oriental & African Studies v The Rating Authority for the City of Westminster
The Hotel Regina (Torquay) Ltd v Moore
Roditi Trading Co Ltd v The Port of London Authority and ors
The King v Assessment Committee of the City of Westminster
Watson v Weigall

SPECIAL PAPER.

Wirral UDC v County Borough Council of Wallasey and ors
Mayor &c of Birkenhead v Same and ors
The London & Home Counties Joint Electricity Authority v Surrey County Valuation Committee and anr
Hills v Co-operative Wholesale Soc Ltd
Taylor and anr v Eagle Star Insurance Co Ltd
Howard Farrow Ltd v Ocean Guarantee Corpn Ltd
May & Hassell Ltd v Vsesojuznoje Objedinen Ije "Exportles" of Moscow (Commercial List 29th January, 1940)
Same v Same
The Milk Marketing Board v Frearson
Digby v General Accident Fire & Life Assurance Corpn (Commercial List 6th February 1940)
Imperial Smelting Corpn Ltd v Joseph Constantine Steamship Line Ltd (Commercial List 6th February, 1940)
Meikleiohn v Campbell

APPEALS UNDER THE PUBLIC WORKS FACILITIES ACT, 1930.

London Rd, Newcastle-under-Lyme Compulsory Purchase Order, 1939 (Appeal of Fredk H Burgess Ltd and the Trustees of F H Burgess, dec)
County Council of Middlesex Great Chertsey Road (Compulsory Purchase) Order 1937 (Appeal of W W Harris)

APPEALS UNDER THE HOUSING ACTS, 1925-1936.

Bethnal Green (Vyner Street, No. 6) Confirmation Order, 1937 (Appeal of Trustees of Mrs. Bates Trust for the Moravians)
Same (Vyner Street, No 7) Same
L C C (Oxley Street, Bermondsey) Order, 1938 (Appeal of Dockhead Engineering Co)
County of London (Bethnal Green, No 1) Re-Development Plan (Appeal of Trustees of the Mrs. Elizabeth Bates Trust for the Moravians)
Shrewsbury (Golden Ball Farm, etc) Confirmation Order, 1939 (Appeal of Mrs. Annie Williams)
Bright Street and Weedon Street Confirmation Order, 1938 (Appeal of Benjamin Blaskey)
Birmingham (Bordesley Park Road) Confirmation Order, 1938 (Appeal of Small Estates Ltd)
Birmingham (Garrison Lane) Confirmation Order No. 2 of 1938 (Appeal of Alfred Taylor and ors)
L C C (Riley Street, Chelsea, No. 1) Confirmation Order, 1938 (Appeal of John Sainsbury Gilbert)

APPEALS UNDER THE UNEMPLOYMENT INSURANCE ACTS, 1935-1938.

Appeal against the decision of the Minister of Labour as to the Employment of Alexander Hogan
Appeal against the decision of the Minister of Labour as to the Employment of Gladys Lilian Porteous
Appeal against the decision of the Minister of Labour as to the Employment of Ada Garrat

MOTIONS FOR JUDGMENT.

Trafalgar Insurance Co Ltd v Clark
Cornhill Insurance Company Ltd v Pickard and anr

REVENUE PAPER—Cases Stated.

William Cooper Hobbs and H G L Hussey (H M Inspector of Taxes)
Hamstead Colliery (1930) Limited and R J McLaughlin (H M Inspector of Taxes)
C W Walsh and J E Randall (H M Inspector of Taxes)
Ipoh Tin Dredging Limited and George Rand Simpson (H M Inspector of Taxes)
Brightman & Son and E Williams (H M Inspector of Taxes)
Lord Howard de Walden and G Beck (H M Inspector of Taxes)
The Corporation of Reigate and F J Cattermole (H M Inspector of Taxes)
Stanley Southern (H M Inspector of Taxes) and Angus Watson, George Foster Abell and Seaverns Andrew Cohen (as Executors of Percy Lionel Cohen, dec)
A E Mallandain Investments Limited (In Equidation) and A J Shadbolt (H M Inspector of Taxes)
A G Harling (H M Inspector of Taxes) and Celynen Collieries Workmen's Institute
Mrs M M Gasque and The Commissioners of Inland Revenue
Shop Investments Limited and S L Sweet (H M Inspector of Taxes)
Mrs E M Sothern-Smith and J M Clancy (H M Inspector of Taxes)
Mrs Phyllis M Langford and The Commissioners of Inland Revenue
Mrs M F Maude and Commissioners of Inland Revenue
S Southern (H M Inspector of Taxes) and Aldwych Property Trust Ltd
G Beck (H M Inspector of Taxes) and Lord Howard de Walden
James Gillatly McMillan and W H Guest (H M Inspector of Taxes)
Joseph Fenstone and D Johnstone (H M Inspector of Taxes)
Arthur D' Ambrumeuil and Commissioners of Inland Revenue
W E Sharpless and Rees (H M Inspector of Taxes)
Mrs Helen Babbott MacDonald and The Commissioners of Inland Revenue
Commissioners of Inland Revenue and The Right Hon Lady Wolverton
Stemco Limited and G H Hyett (H M Inspector of Taxes)
Stemco Limited and The Commissioners of Inland Revenue
Thomas Fattorini (Lancashire) Ltd and The Commissioners of Inland Revenue
Lombard Stockholders Trust and The Commissioners of Inland Revenue
Mrs Gertrude Jane Aveling Moorshead and F E Thornley (H M Inspector of Taxes)
A W Lawrence and others and The Commissioners of Inland Revenue
H V Bourland (H M Inspector of Taxes) and Pirie Appleton & Co Ltd
L S Murphy (H M Inspector of Taxes) and Thomas E Gray & Co Ltd
Thomas E Gray & Co Ltd and L S Murphy (H M Inspector of Taxes)
O K Trust Ltd and D R Rees (H M Inspector of Taxes)

PETITION.

In the Matter of the Fines Act, 1833, and In the Matter of a Petition by the Co-poration of the City of London

ENGLISH INFORMATION.

H M Attorney-General and Jane Marjorie Oldham

Divorce cases in Scotland, which have been steadily increasing since 1936, reached a total last year of 892, which was 100 more than in 1938. The increase is partly due to the operation of the Divorce (Scotland) Act, 1938, which reduced the period of desertion from four to three years and provided additional grounds of action in cruelty and insanity.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October 1939) 2%. Next London Stock Exchange Settlement, Thursday, 25th January, 1940.

	Div. Months.	Middle Price 10 Jan. 1940.	Flat Interest Yield.	‡ Approximate Yield with redemption
			£ s. d.	£ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	106	3 15 6	3 10 7
Consols 2½%	JAJO	71	3 10 5	—
War Loan 3½% 1952 or after ..	JD	96½	3 12 6	—
Funding 4% Loan 1960-90	MN	110	3 12 9	3 6 1
Funding 3% Loan 1959-69	AO	95½	3 2 10	3 4 10
Funding 2¾% Loan 1952-57 ..	JD	94	2 18 6	3 4 2
Funding 2½% Loan 1956-61 ..	AO	88½	2 16 6	3 5 4
Victory 4% Loan Av. life 21 years	MS	108½	3 13 9	3 8 5
Conversion 5% Loan 1944-64 ..	MN	109⅞	4 11 0	2 7 8
Conversion 3½% Loan 1961 or after	AO	97	3 12 2	—
Conversion 3% Loan 1948-53 ..	MS	99½	3 0 4	3 0 11
Conversion 2½% Loan 1944-49 ..	AO	97	2 11 7	2 17 8
National Defence Loan 3% 1954-58	JJ	97½	3 1 6	3 3 7
Local Loans 3% Stock 1912 or after	JAJO	83½	3 11 10	—
Bank Stock	AO	326½	3 13 5	—
Guaranteed 2½% Stock (Irish Land Act) 1933 or after	JJ	78	3 10 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	84	3 11 5	—
India 4½% 1950-55	MN	106½	4 4 6	3 14 2
India 3½% 1931 or after	JAJO	86	4 1 5	—
India 3% 1948 or after	JAJO	74	4 1 1	—
Sudan 4½% 1939-73 Av. life 27 years	FA	106	4 4 11	4 2 6
Sudan 4% 1974 Red. in part after 1950	MN	104	3 16 11	3 11 1
Tanganyika 4% Guaranteed 1951-71	FA	102	3 18 5	3 15 5
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	103	4 7 5	3 0 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	89	2 16 2	3 8 0
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	99½	4 0 5	4 0 7
Australia (Commonw'th) 3% 1955-58	AO	85½	3 10 2	4 2 4
*Canada 4% 1953-58	MS	106½	3 15 1	3 8 2
Natal 3% 1929-49	JJ	95	3 3 2	3 13 11
New South Wales 3½% 1930-50 ..	JJ	94½	3 14 1	4 3 8
New Zealand 3% 1945	AO	93½	3 4 2	4 9 7
Nigeria 4% 1963	AO	101½	3 18 10	3 18 0
Queensland 3½% 1950-70	JJ	86½	4 0 11	4 6 1
*South Africa 3½% 1953-73	JD	98	3 11 5	3 12 1
Victoria 3½% 1929-49	AO	94½	3 14 1	4 3 8
CORPORATION STOCKS				
Birmingham 3% 1947 or after ..	JJ	78	3 16 11	—
Croydon 3% 1940-60	AO	88	3 8 2	3 17 6
*Essex County 3½% 1952-72 ..	JD	97	3 12 2	3 13 2
Leeds 3% 1927 or after	JJ	78	3 16 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase ..	JAJO	90	3 17 9	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	69½	3 11 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	81	3 14 1	—
London County 3½% Consolidated Stock 1954-59	FA	99	3 10 8	3 11 6
Manchester 3% 1941 or after ..	FA	78	3 16 11	—
Metropolitan Consd. 2½% 1920-49 ..	MJSD	96	2 12 1	2 19 5
Metropolitan Water Board 3% "A" 1963-2003	AO	81½	3 13 7	3 15 4
Do. do. 3% "B" 1934-2003 ..	MS	84½	3 11 0	3 12 6
Do. do. 3% "E" 1953-73 ..	JJ	89	3 7 5	3 11 4
*Middlesex County Council 4% 1952-72	MN	102	3 18 5	3 16 0
* Do. do. 4½% 1950-70	MN	105	4 5 9	3 18 6
Nottingham 3% Irredeemable ..	MN	78	3 16 11	—
Sheffield Corp. 3½% 1968	JJ	96	3 12 11	3 14 8
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ..	JJ	99½	4 0 5	—
Gt. Western Rly. 4½% Debenture ..	JJ	104	4 6 6	—
Gt. Western Rly. 5% Debenture ..	JJ	115½	4 6 7	—
Gt. Western Rly. 5% Rent Charge ..	FA	110	4 10 11	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	108	4 12 7	—
Gt. Western Rly. 5% Preference ..	MA	91	5 9 11	—
Southern Rly. 4% Debenture ..	JJ	99¼	4 0 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½	3 18 10	3 18 3
Southern Rly. 5% Guaranteed ..	MA	108½	4 12 2	—
Southern Rly. 5% Preference ..	MA	93	5 7 6	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.